

2.3-B

DEPARTMENT OF
POLICE

ARTURO VENEGAS, JR.
CHIEF OF POLICE

CITY OF SACRAMENTO
CALIFORNIA

April 11, 1994

HALL OF JUSTICE
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SACRAMENTO, CA
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Law and Legislation Committee
Sacramento, CA 95814

Honorable Members in Session:

SUBJECT: Assembly Bill 2742 pertaining to liquor licenses

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION: Support legislation

CONTACT PERSON: Claudia Evans, Administrative Services Officer, 264-7346

FOR COMMITTEE MEETING OF: April 19, 1994

SUMMARY:

Assembly Bill 2742 by Assembly Member Barbara Lee attempts to increase accountability on the part of the Department of Alcoholic Beverage Control, adds grounds for liquor license suspensions, and establishes minimum operating standards for all retail licenses.

It is recommend that the City support this legislation.

BACKGROUND INFORMATION:

Holders of liquor licenses who are not "good neighbors" can foster a variety of problems in a neighborhood including loitering, urinating in public, public drunkenness, drug activity, panhandling, litter, etc. Currently the City has the ability to mitigate such problems by imposing conditions on the holder of a liquor license via the use of conditional use permits through our land use authority. The City can then revoke the conditional use permit if the owner does not comply with the conditions set forth.

Assembly Bill 2742 by Assembly Member Barbara Lee attempts to increase accountability on the part of the Department of Alcoholic Beverage Control, adds grounds for liquor license suspensions, and establishes minimum operating standards for all retail licenses. Specifically, Assembly Bill 2742 will do the following:

- Requires ABC to notify local planning agencies of applications original or transfer licenses.
- Allows for a 30 day extension to properly prepare protests to the issuance or transfer of a license at the request of a local agency.
- Requires ABC to consider local comments as substantial factors in determining whether or not to approve, conditionally approve, or deny application for original or transfer of license.
- Requires ABC to provide written findings if they reject protests.
- Adds the adjacent sidewalk to those areas where the licensee must correct objectional conditions or face suspensions.
- Adds revocation of a local land use permit as grounds for suspension of license. Requires ABC to diligently pursue suspension or revocation in these cases.
- If ABC determines not to suspend or revoke a license after the land use permit is revoked, they must make written findings.
- Makes it a misdemeanor to have "constructive knowledge" of activities that result in disturbance or the peace or are injurious to public morals, health, safety, etc. that are occurring in conjunction with the licensed premises.
- Adopts minimum standards for all retail licenses which includes:
 - No loitering signs
 - Employees must request loiters to leave
 - No open container allowed signs
 - Prohibition of drinking on premises
 - Illumination of premises, parking lots and sidewalks while open
 - Daily litter removal and weekly sweeping of parking lots, sidewalks, etc.
 - Graffiti removal within 72 hours of discovery

Only 33% of windows can be used for advertising and no obstruction of police view.
Can require that there be no incoming calls on public telephones
Posting of operating standards
Names and addresses or phone numbers of licenses and employees must be posted
Premises must be operated in a manner that does not result in repeated nuisances

FINANCIAL CONSIDERATIONS:

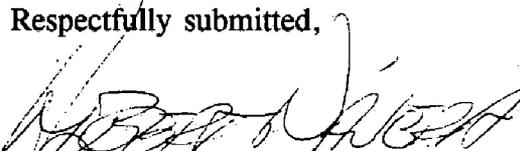
Support of this bill does not have any financial implications for the City. However, should this bill fail and the City lose its ability to place conditions on liquor establishments via the land use process, police calls to these types of locations may increase, resulting in an unknown cost to the City.

POLICY CONSIDERATIONS:

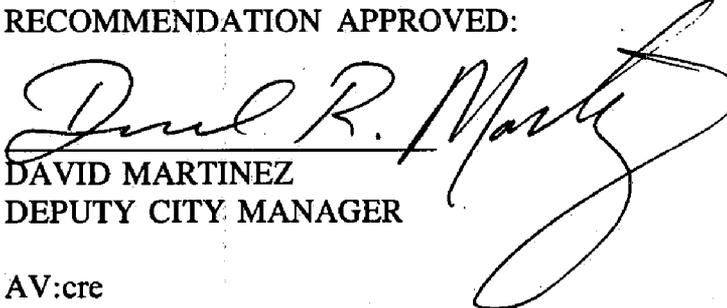
Support of this bill is consistent with the City Council's policy of requiring conditional use permits for liquor establishments as well as the policy to assist neighborhoods in improving the quality of life in all neighborhoods throughout the City.

MBE/WBE: Not Applicable

Respectfully submitted,


ARTURO VENEGAS, JR.
CHIEF OF POLICE

RECOMMENDATION APPROVED:


DAVID MARTINEZ
DEPUTY CITY MANAGER

AV:cre
Ref: 4-42

In bill text, brackets have special meaning:

[A> <A] contains added text, and

[D> <D] contains deleted text.

California 1993-94 Regular Session
Amended

AMENDED IN ASSEMBLY MARCH 24, 1994

ASSEMBLY BILL

No. 2742

Introduced by Assembly Member Lee

February 9, 1994

An act to amend [D> Section 23789 of <D] [A> Sections 23987, 24013, 24200, and 25601 of, and to add Sections 23988, 24301, and 25612.5 to, <A] the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2742, as amended, Lee. Alcoholic beverages [D> : retail license issuance <D] .

[A> Existing law requires the Department of Alcoholic Beverage Control to notify the appropriate sheriff, chief of police, district attorney, and legislative body of an application for the issuance or transfer of a liquor license, and prohibits the Department of Alcoholic Beverage Control from issuing or transferring a license until at least 30 days after these notices are provided. <A]

[A> This bill would require the Department of Alcoholic Beverage Control to also notify the appropriate local land use planning agency of license or license transfer application, and would allow any party that is so notified to request an extension of the 30-day waiting period for a period not to exceed an additional 30 days. <A]

[A> This bill would require the Department of Alcoholic Beverage Control to give substantial deference, as defined, to the comments of a local jurisdiction with respect to an application for the issuance or transfer of a license, and to provide written findings where the department determines that the application should not be denied or conditionally approved because those comments are outweighed by other factors. <A]

[A> Existing law authorizes the Department of Alcoholic Beverage Control to reject a protest, except as provided, with respect to an application for the issuance of a liquor license, where the department determines that the protest is false, vexatious, or is without reasonable or probable cause. <A]

[A> This bill would require the Department of Alcoholic Beverage Control to issue and transmit to the protestant written findings in the case in which the department rejects a protest under this authority. <A]

[A> Existing law establishes various matters, including a licensee's failure to take reasonable steps to correct a nuisance on the licensed premises or other immediate areas within a reasonable time after receipt of a notice pursuant to a specified statute, as grounds for the suspension or revocation of a liquor license. <A]

[A> This bill would include public sidewalks adjacent to the licensed premises as other immediate areas for purposes of this provision. <A]

[A> This bill would also include the failure to operate the licensed premises in conformity with local zoning regulations, as evidenced by a local jurisdiction's revocation of a local land use permit, as grounds for suspension or revocation of a liquor license. It would, as provided, require the Department of Alcoholic Beverage Control to diligently pursue license suspension or revocation upon notice that a local jurisdiction has revoked a land use permit with respect to the licensed premises. <A]

[A> Existing law provides that an accusation may be filed with the Department of Alcoholic Beverage Control with respect to a licensee and that a hearing may be held by the department with respect to that accusation to determine whether the license in question should be suspended or revoked. <A]

[A> This bill would require the Department of Alcoholic Beverage Control to give substantial deference, as defined, to a local jurisdiction's revocation of a land use permit, in conducting a hearing required by this bill with respect to the relevant licensee, and to make written findings, as provided, where the department determines that the local permit revocation is outweighed by other evidence. <A]

[A> Existing law makes it a misdemeanor for any licensee, or agent or employee thereof, to keep, permit, or suffer, in conjunction with licensed premises, a disorderly house or other place that is a source of disturbance or is injurious to the public welfare. <A]

[A> This bill would revise and recast this provision to, among other things, also establish misdemeanor liability in the case of constructive knowledge of the disturbing or injurious conditions. By changing the definition of a crime, this bill would establish a state-mandated local program. <A]

[A> Existing law establishes certain regulatory requirements with respect to alcoholic beverages, and provides that the violation of any of those requirements shall be punished as a misdemeanor, unless otherwise provided. <A]

[A> This bill would establish certain minimum general operating standards with respect to the licensed premises of retailers of alcoholic beverages, the violation of which would be punishable as a misdemeanor. By creating a new crime, this bill would establish a state-mandated local program. <A]

[A> 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.

[A> This bill would provide that no reimbursement is required by this act for a specified reason. <A]

[D> Existing law authorizes the Department of Alcoholic Beverage Control to refuse the issuance, other than renewal or ownership transfer, of any retail license for premises located within the immediate vicinity of churches and hospitals. <D]

[D> This bill would also authorize the department to refuse the issuance, other than renewal or ownership transfer, of any retail license for premises located within the immediate vicinity of licensed alcoholism or drug abuse recovery or treatment facilities. <D]

Vote: majority. Appropriation: no. Fiscal committee: [D> no <D]
[A> yes <A] . State-mandated local program: [D> no <D] [A> yes <A]

The people of the State of California do enact as follows:

[D> SECTION 1. Section 23789 of the Business and <D]

[A> SECTION 1. Section 23987 of the Business and Professions Code is amended to read: <A]

23987. Upon the receipt by the department of an original application for any license or an application for transfer of any

license, written notice thereof, [D] which shall consist [D] [A] consisting [A] of a copy of the application, shall immediately be mailed by the department to the sheriff, chief of police, [A] land use planning agency, [A] and district attorney of the locality in which the premises are situated, to the board of supervisors of the county in which the premises are situated, if in unincorporated territory, and to the city council or other governing body of the city in which the premises are situated, if within an incorporated area.

No license shall be issued or transferred by the department until at least 30 days after the mailing by the department of the notices required by this section. [A] The department may extend the 30-day period specified in the preceding sentence for a period not to exceed an additional 30 days, upon the written request of any local agency, governing body, or local official described in this section that states proper grounds for extension. Proper grounds for extension include, but are not limited to, the requesting agency or official being in the process of preparing either a protest or proposed conditions with respect to the issuance or transfer of a license. [A]

[A] SEC. 2. Section 23988 is added to the Business and Professions Code, to read: [A]

[A] 23988. (a) In considering an application for the original issuance or transfer of a license, the department shall give substantial deference, as defined in subdivision (b), to the comments of a local jurisdiction, including that jurisdiction's request for denial or conditional approval of that application, made in response to that application. If, after giving substantial deference to the comments of a local jurisdiction as required by this subdivision, the department determines not to deny or conditionally approve the application as requested by the local jurisdiction in its comments, the department shall make written findings of those considerations that were determined by the department to outweigh those comments, and shall transmit a copy of those findings to that local jurisdiction. [A]

[A] (b) For purposes of this section, "substantial deference" means consideration of the comments of a local jurisdiction as a substantial factor in determining whether to approve, conditionally approve, or deny an application for the issuance or transfer of a license. [A]

[A] SEC. 3. Section 24013 of the Business and Professions Code is amended to read: [A]

24013. Protests may be filed at any office of the department at any time within 30 days from the first date of posting the notice of

intention to engage in the sale of alcoholic beverages at the premises, or within 30 days of the mailing of the notification pursuant to Section 23985.5, whichever is later.

The department may reject protests, except protests made by a public agency or public official or protests made by the governing body of a city or county, if it determines the protests are false, vexatious, or without reasonable or probable cause at any time before hearing thereon, notwithstanding Section 24016 or 24300. [A > If the department rejects a protest, it shall make written findings of the considerations that were determined by the department to outweigh the protest, and shall transmit a copy of those findings to the protestant. < A] If the department rejects a protest as provided in this section and issues a license, a protestant whose protest has been rejected may, within 10 days after the issuance of the license, file an accusation with the department alleging the grounds of protest as a cause for revocation of the license and the department shall hold a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Nothing in this section shall be construed as prohibiting or restricting any right which the individual making the protest might have to a judicial proceeding.

[A > SEC. 4. Section 24200 of the Business and Professions Code is amended to read: < A]

24200. The following are the grounds [D > which < D] [A > that < A] constitute a basis for the suspension or revocation of licenses:

(a) When the continuance of a license would be contrary to public welfare or morals [D > ; but < D] [A > . However, < A] proceedings under this [D > section upon this ground < D] [A > subdivision < A] are not a limitation upon the department's authority to proceed under Section 22 of Article XX of the California Constitution.

(b) Except as limited by Chapter 11 (commencing with Section 24850) and Chapter 12 (commencing with Section 25000) [D > of this division < D] , the violation or the causing or the permitting of a violation by a licensee of this division, any rules of the board adopted pursuant to Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code, or any rules of the department adopted pursuant to the provisions of this division, or any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors.

(c) The misrepresentation of a material fact by an applicant in obtaining a license.

(d) The plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude or under any federal law prohibiting or regulating the sale, exposing for sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors or prohibiting the refilling or reuse of distilled spirits containers charged against the licensee.

(e) Failure to take reasonable steps to correct objectionable conditions on the licensed premises [D> or <D] [A> , including the <A] immediate adjacent area [A> that is <A] owned, leased, or rented by the licensee [D> constituting <D] [A> and any adjacent public sidewalk, that constitute <A] a nuisance within a reasonable time after receipt of notice to make [D> such <D] [A> those <A] corrections from a district attorney, city attorney, county counsel, or the department, under Section 373a of the Penal Code. For the purpose of this subdivision only, "property or premises" as used in Section 373a of the Penal Code includes the area immediately adjacent to the licensed premises [D> which <D] [A> that <A] is owned, leased, or rented by the licensee [A> and any public sidewalk that is immediately adjacent to the licensed premises <A] .

[A> (f) Failure to operate the licensed premises in conformity with the zoning regulations of the local jurisdiction in which those premises are located, as evidenced by that jurisdiction's revocation of a land use permit with respect to those premises. Upon notice that a local jurisdiction has revoked a local land use permit with respect to the licensed premises, the department shall diligently pursue suspension or revocation of the relevant license and shall conduct a hearing in accordance with Section 24301 to determine whether the license should be suspended or revoked. <A]

[A> SEC. 5. Section 24301 is added to the Business and Professions Code, to read: <A]

[A> 24301. (a) In conducting a hearing required under subdivision (f) of Section 24200, the department shall give substantial deference, as defined in subdivision (b), to that jurisdiction's revocation of a local land use permit. If, after giving substantial deference to the local permit revocation as required by this subdivision, the department determines that the license in question shall not be suspended or revoked, the department shall make written findings of the evidence that was determined by the department to outweigh the local permit revocation and any other evidence supporting suspension or revocation, and shall

transmit copies of those written findings to that jurisdiction. <A]

[A> (b) For purposes of this section, "substantial deference" means consideration of a local jurisdiction's revocation of a land use permit as substantial evidence that the licensee is operating licensed premises in a manner contrary to public welfare or morals. <A]

[A> SEC. 6. Section 25601 of the Business and Professions Code is amended to read: <A]

25601. Every licensee, or agent or employee of a licensee, who keeps, permits [D> to be used <D] , [D> or <D] suffers [D> to be used <D] , [A> or has constructive knowledge of, <A] in conjunction with a licensed premises, [D> any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which <D] [A> activities that result in the disturbance of the peace or <A] are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor.

[A> SEC. 7. Section 25612.5 is added to the Business and Professions Code, to read: <A]

[A> 25612.5. (a) The Legislature finds and declares that it is in the interest of the public health, safety, and welfare to adopt minimum operating standards as set forth in this section for all retail premises licensed by the department. Nothing in this section shall be construed to limit the ability of local jurisdictions to adopt and implement more stringent standards in the form of local land use controls. <A]

[A> (b) Each retail licensee shall comply with all of the following: <A]

[A> (1) A prominent, permanent sign or signs stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee, persons using the parking lot immediately adjacent to the licensed premises, and persons on the public sidewalk immediately adjacent to the licensed premises. The size, format, form, and languages of the sign or signs shall be determined by the department. <A]

[A> (2) The licensee, or any employee or agent of the licensee, shall request loiterers (any individual who appears to be loitering immediately outside the premises for more than ten minutes without any purpose) to leave, and shall seek police assistance if that request is not honored. <A]

[A> (3) A prominent, permanent sign or signs stating "NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee, persons using the parking lot immediately adjacent to the licensed premises, and persons on the public sidewalk immediately adjacent to the licensed premises. The size, format, form, and languages of the sign or signs shall be determined by the department. <A]

[A> (4) No alcoholic beverages shall be consumed on the premises of an off-sale retail establishment, and no alcoholic beverages shall be consumed outside the edifice of an on-sale retail establishment. <A]

[A> (5) The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the licensee, shall be illuminated at all times while the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, the required illumination shall be placed so as to minimize interference with the quiet enjoyment of nearby residents of their property. <A]

[A> (6) Litter shall be removed daily from the premises, including adjacent public sidewalks and all parking lots under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris. <A]

[A> (7) Graffiti shall be removed from the premises, including adjacent public sidewalks and all parking lots under the control of the licensee, within 72 hours of application. <A]

[A> (8) No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises. <A]

[A> (9) Upon request of the local jurisdiction in which the licensed premises are located or at the discretion of the department, each public telephone located on off-sale premises (or located in an adjacent area under the control of the off-sale licensee) shall be equipped with devices or mechanisms that prevent persons from calling into that public telephone. <A]

[A> (10) A copy of the operating standards shall be conspicuously posted alongside the establishment's business license and shall be visible at all times to employees and the general public. <A]

[A> (11) The name of the licensee, and each employee and agent of the licensee, and the address or telephone number at which these individuals may be contacted shall be conspicuously posted and shall be visible at all times to employees and the general public. <A]

[A> (12) The establishment shall be operated in a manner that does not result in repeated nuisance activities, including, but not limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, graffiti, lewd conduct, and excessive loud noises. <A]

[A> SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution. <A]

[D> Professions Code is amended to read: <D]

[D> 23789. (a) The department is specifically authorized to refuse the issuance, other than renewal or ownership transfer, of any retail license for premises located within the immediate vicinity of churches, hospitals, and licensed alcoholism or drug abuse recovery or treatment facilities. <D]

[D> (b) The department is specifically authorized to refuse the issuance, other than renewal or ownership transfer, of any retail license for premises located within at least 600 feet of schools and public playgrounds or nonprofit youth facilities, including, but not limited to, facilities serving Girl Scouts, Boy Scouts, or Campfire Girls. This distance shall be measured pursuant to rules of the department. <D]