



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: May 4, 2021

Agenda Item 9F
Approvals:
City Manager EJ *B*
Dept. Head _____
Attorney _____
Finance STW

Department: Finance & Administrative Services
Prepared By: Jonathan Lightfoot, Economic Development Officer

Subject: *LETTER OF SUPPORT, SB 314 (WEINER)*

Fiscal Impact: Indirect. If SB 314 is passed, some local businesses would likely see an increase in revenues in 2021 resulting in marginal increased sales tax receipts.

Summary: Senate Bill 314, the "Bar and Restaurant Recovery Act", would extend the allowance for the ABC's temporary catering license program by one year from the date the Covid-19 state of emergency is lifted. This ABC permit has allowed local businesses to serve adult beverages outdoors through a simplified permit process during the pandemic. This bill would also allow shared spaces by different licensees and make them jointly responsible for those spaces. Finally, it doubles the number of times a caterer's permit can be used at any one location to 52, but it extends the lead-time required for certain event permits. Attachment 2 provides the bill summary with additional detail.

Background: The business community and majority of San Clemente residents have enjoyed the temporary outdoor dining program implemented under the City's local emergency powers during the pandemic. The City's program will continue until the City Council ends the local state of emergency due to the pandemic. With the Governor's announced intention of removing business operations limits on June 15th, the State of California may consider lifting the state of emergency over the summer.

Discussion: Many businesses and their patrons are anxious to see a path forward for outdoor dining. This bill would extend the ABC's allowance for alcohol service in outdoor dining areas for one year beyond the end of the state of emergency. Beyond that, businesses would need to go through the full process with the ABC to pursue an expanded license area.

Additionally, Council previously directed staff to initiate a permanent program, which would entail a Zoning Code Amendment. Staff has prepared an initial timeline, which would kick off with a Planning Commission study session in July. The intent is to complete the process by February 2022, so that businesses could apply for that program in time for summer of 2022. The permanent program will likely implement construction standards and fees for use of public space. These considerations and others would be codified through the Zoning Amendment process.

Recommended

Action: STAFF RECOMMENDS THAT the City Council authorize the Mayor to sign the attached support letter for SB 314.

Attachments: 1. Draft support letter for SB 314
2. SB 314 Bill Analysis by the Senate Committee on Governmental Organization

Notification: Business participants of the Temporary Outdoor Operations Program



San Clemente

CELEBRATING 90 YEARS OF INCORPORATION

**OFFICE OF THE MAYOR
AND CITY COUNCIL**

Kathy Ward
Mayor

Gene James
Mayor Pro Tem

Laura Ferguson

Chris Duncan

Steve Knoblock

INTERIM CITY MANAGER

Erk Sund

910 Calle Negocio, Ste. 300
San Clemente, CA 92673
Phone: (949) 361-8200
SundE@san-clemente.org

May 4, 2021

Senator Scott Weiner
State Senator, 11th District
State Capitol, Room 5100
Sacramento, CA 95814

RE: SB314 (Weiner) Alcoholic Beverages; Notice of Support

Dear Senator Weiner,

On behalf of the City Council of the City of San Clemente, I am writing to express support for SB 314, your measure that would extend support for local restaurants, bars, and performing arts venues in their continued recovery from the economic impacts of the Covid-19 impacts.

Outdoor dining has been incredibly successful in maintaining an atmosphere of improved safety during the pandemic while allowing some semblance of continuity for these local businesses. City staff has been regularly contacted by these businesses, concerned that the emergency programs to allow for outdoor dining will disappear with the end of California's declared emergency in regards to the pandemic. The June 15th reopening date brings hope, but also some concern about another change in operations as these businesses approach their peak season. The City supports the extension of State agency support, from the ABC to the Coastal Commission, in maintaining the outdoor dining environment through the remainder of 2021.

While the pandemic has been incredibly difficult for all communities, outdoor dining was a spontaneous experiment enjoyed by our residents. We have received numerous public requests to make the "European" streetscape permanent. With the support of bills like yours, this renewed life in the public realm can strengthen its roots in all of our communities.

Sincerely,

Mayor Kathy Ward

"The Spanish Village
by the Sea"

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION
Senator Bill Dodd
Chair
2021 - 2022 Regular

Bill No:	SB 314	Hearing Date:	4/20/2021
Author:	Wiener, et al.		
Version:	4/13/2021 Amended		
Urgency:	Yes	Fiscal:	Yes
Consultant:	Felipe Lopez		

SUBJECT: Alcoholic beverages

DIGEST: This bill authorizes the Department of Alcohol Beverage Control (ABC) to, for 365 days from the date the Covid-19 state of emergency is lifted, allow licensees to continue to exercise license privileges in an expanded licensed area authorized pursuant to a Covid-19 temporary catering permit, as provided. In addition, the bill allows a licensed manufacturer to share a common licensed area with multiple licensed retailers, as specified. Further, the bill extends from 30 to 90 days by which a licensee must apply to the Department of ABC for specified event which permits specified licensees to provide their own alcohol free of charge at an invitation only event. Finally, the bill increases the number of times, from 24 to 52 in a calendar year, that the Department of ABC can issue a caterer's permit for use at any one location.

ANALYSIS:

Existing law:

- 1) Establishes the Department of ABC and grants it exclusive authority to administer the provisions of the ABC Act in accordance with laws enacted by the Legislature.
- 2) Separates the alcoholic beverage industry into three component parts, or tiers, of the manufacturer (including breweries, wineries, and distilleries), wholesaler, and retailer (both on-sale and off-sale). This is referred to as the "tied-house" law or "three-tier" system.
- 3) Provides that licenses may be transferred from one person to another person and/or from one premises to another premises. Since the "premises" is the area in which license privileges may be exercised, increasing the licensed area may involve transferring the license from one "premises" to another "premises."

- 4) Generally prohibits a licensee from having upon its licensed premises any alcoholic beverages other than the alcoholic beverages for which the licensee is authorized to sell at the premises under his or her license, and provides that a violation of this prohibition is punishable as a misdemeanor and authorizes the Department of ABC to seize any alcoholic beverages found in violation of this prohibition.
- 5) Permits specified licensees, to provide, free of charge, entertainment, food, and distilled spirits, wine, or nonalcoholic beverages to consumers at an invitation-only event, held on specified premises, in connection with the sale or distribution of wine or distilled spirits. Licensees are required, at least 30 days prior to an event, to apply to the Department of ABC for a permit authorizing the event and provide specified information.
- 6) Authorizes the issuance of a caterer's permit, upon application to the Department of ABC, to a licensee under an on-sale general license, an on-sale beer and wine license, a club license, or a veteran's club license, that authorizes the holder of the permit to sell alcoholic beverage at specified locations and events, including, among others, conventions, sporting events, and trade exhibits.
- 7) Allows a licensed winegrower and a licensed small beer manufacturer, whose premises of production are immediately adjacent to each other, to share a common area in which the consumption of alcoholic beverages is permitted, under specified circumstances.
- 8) Allows on-sale licensees to share a common area under specified conditions, including that both on-sale licensees have joint responsibility.
- 9) Defines an "on-sale" license as authorizing the sale of all types of alcoholic beverages: namely, beer, wine, and distilled spirits, for consumption on the premises (such as at a restaurant or bar). An "off-sale" license authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers.

This bill:

- 1) Authorizes the Department of ABC, for a period of 365 days from the date when the Covid-19 state of emergency order is lifted, to permit licensees to continue to exercise license privileges in an expanded licensed area authorized pursuant to a Covid-19 temporary catering permit, as defined.

- 2) Provides that the Covid-19 temporary catering permits approved by the Department of ABC shall be subject to terms and conditions established by the department.
- 3) Authorizes the Department of ABC to extend the time period that the Covid-19 temporary permit is valid beyond the 365 days if the licensee has filed a pending application with the department for the permanent expansion of the premises.
- 4) Authorizes an alcohol manufacturer to share a common licensed area with multiple retailers, as specified and subject to all of the following conditions:
 - a) A retailer sharing a common licensed area with a manufacturer shall not serve any alcohol beverages that are manufactured, produced, bottled, or sold by the manufacturer. This prohibition shall apply to all licensed premises owned or operated by the retailer anywhere in the state.
 - b) All retailers sharing the common licensed area shall hold the same license type.
 - c) 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 disciplinary action.
- 5) Increases the number of times, from 24 to 52 in a calendar year, that the Department of ABC can issue a caterer's permit for use at any one location.
- 6) Extends from 30 to 90 days by which a licensee must apply to the Department of ABC for an event permit that allows specified licensees, to provide, free of charge, entertainment, food, and distilled spirits, wine, or nonalcoholic beverages to consumers at an invitation-only event.

Background

Purpose of the bill. According to the author's office, "SB 314 will help California's events, restaurants, and bars recover economically from the impacts of the COVID-19 pandemic by creating more flexibility in how they can serve alcohol, including where they can serve alcohol, how they can share spaces with other businesses, and how frequently a catering permit can be used. The bill also implements a one-year grace period after the emergency order is lifted for businesses to continue expanded outdoor dining operations on their premises that locals have enjoyed throughout the pandemic. Combined with other critical measures, SB 314 will help the hospitality industry bounce back from the devastating impacts of the pandemic, enacting common sense reforms,

restructuring outdated laws, and allowing businesses more opportunities to recover. These businesses make up a huge part of the fabric of our communities, and employ so many of our neighbors, so we must do everything in our power to ensure a quick recovery.”

Fourth Notice of Regulatory Relief. On March 15, 2020, the Department of ABC issued its Fourth Notice of Regulatory Relief, which was intended to assist qualified hospitality businesses with reopening in a manner that is consistent with local and state health and safety directives. The notice created the Covid-19 temporary catering permit, which authorizes the on-site consumption of those alcoholic beverages for which the licensee has on-sale privileges; on property that is adjacent to the licensed premises and that is under the control of the licensee.

A qualified business is required to apply to the Department of ABC and include a diagram which clearly identifies where the requested area is in relation to the existing licensed premise. Prior to submitting an application, the licensee is responsible for, among other things, ensuring they have the legal authority to use the area requested, ensuring that the temporary expansion request has the approval of local agencies, and ensuring the temporary expansion request is being made in accordance with applicable city, county, and state guidelines regarding social distancing and the legality of the business being open for in-person service.

If approved, the licensee is authorized to exercise only those privileges authorized by the licensee’s license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises. Violations of these provisions, as well as the terms and conditions of the Covid-19 Temporary Catering Authorization, may be grounds for suspension or revocation of the licensee’s license, as though the violation occurred on the licensed premises.

If the temporarily authorized area is being utilized by one or more other licensees, all licensees sharing the area are jointly responsible for compliance with all applicable laws and rules pertaining to their respective licenses and authorizations and for any violations that may occur within the shared common temporarily authorized area. If at any point a licensee wants to terminate its liability for a shared area, it must cancel its Covid-19 Temporary Catering Authorization.

The Covid-19 Temporary Catering Authorization may be further canceled by the Department of ABC for disturbance of the quiet enjoyment of nearby residents and upon objection by local law enforcement. In addition, since none of the relief measures are specifically authorized by law, the Covid-19 Temporary Catering Authorization will likely end as soon as the Covid-19 emergency order is lifted. In addition, while current law already includes a process by which licenses could permanently expand their licensed premises and thus continue to use the space, this

process can be time consuming since it includes input from various stakeholders including local governments, law enforcement, and members of the public.

This bill provides the Department of ABC with the authority necessary to continue to allow licensees to continue to operate under the Covid-19 Temporary Catering Authorization permit for a period of 365 days after the emergency order is lifted. The bill also allows the Department of ABC to extend the 365-day period as long as the licensee has applied to the department for an expansion of their licensed premises. Alcohol licensees would still need to follow all of the rules set forth under the fourth regulatory relief and would continue to need local approval.

Shared Common Areas. The Department of ABC issues licenses in California for the legal manufacture and sale of alcoholic beverages. There are more than 80 different types of ABC licenses authorized in California. Each license has its own set of privileges and obligations specific to the category of license involved. The privileges of a license are expressly limited to those conferred by the specific type of license involved for the premises and time period covered by the license.

In addition to issuing licenses for the sale of alcohol at restaurants, bars, businesses, and events, the Department of ABC also provides licenses to manufacturers of beer, wine, brandy, and spirits. Specifically, a licensed beer manufacturer with a Type 01 or Type 23 license is authorized to sell beer to consumers for consumption on or off the manufacturer's licensed premises. Similarly, a winegrower with a Type 02 license is authorized to sell wine to consumers for consumption on or off the manufacturer's licensed premises.

Under existing law, it is generally illegal for any licensed business to sell alcohol or have any type of alcohol on their premise that is not included in that license type. For example, if a restaurant obtains a license for beer and wine sales, the presence of distilled spirits on-site would be illegal. The law presumes that all alcoholic beverages found at licensed premises belong to the licensee, and therefore the person who obtained the license would be guilty of a misdemeanor.

While this is normally not a problem, given the fact that most alcohol licensees don't share their licensed premises with any other licensees, over the years new types of businesses have begun to include a number of alcohol licensees under the same roof. Many times, these businesses include a large common area where customers have the ability to enjoy food and alcoholic beverages from a number of different vendors. Unfortunately, given the various different licensing requirements, alcohol manufactures would be in violation of the ABC Act if a customer were to buy an alcoholic beverage and take that drink into the common area. This not only creates frustration for the consumer, but also opens up these businesses for violations of the ABC Act.

This bill allows an alcohol manufacturer to share a common area with multiple retailers subject to various requirements. Among other things, the bill requires all licensees holding licenses within the shared common licensed area to be jointly responsible for compliance with all laws that may subject their license to disciplinary action.

Caterer's permit. Any licensee holding an on-sale beer and wine (Type 41, or 42), on-sale general (Type 47, 48 or 57), club (Type 50 or 51), veterans' club (Type 52), on-sale general wine, food and art culture museum (Type 78), general caterer's (Type 83), a neighborhood restricted special on-sale general (Type 87), or a special on-sale general for historic cemetery (Type 88) license may apply for a caterer's permit. A caterer's permit carries with it an annual fee and authorizes the licensee to apply for catering authorizations. A catering authorization is what permits the licensee to sell alcoholic beverages for consumption upon premises approved by the Department of ABC.

Sites for catered events are at the Department of ABC's discretion. Proximity to schools, churches, State and Federal institutions, and other facilities may be a factor in ABC's decision. Local zoning laws may also be a factor. The site of a catered event may be an unlicensed building or grounds, a licensed building, a separate room within a licensed building, or upon a boat or vessel. A catered event may be held upon private school grounds, however, such authorization is conditioned so that no sale or service of alcoholic beverages is permitted during hours in which any class is in session.

At all approved events, licensees are able to exercise only those privileges authorized by their license and must comply with all provisions of the ABC Act. Any violation may be grounds for the suspension or the revocation of the license, as though the violation occurred at the licensee's licensed premises. Persons under 21 years of age may be allowed on the premises of a catered event unless the location of the event is normally prohibited from allowing minors. However, they may not possess, purchase, or consume alcoholic beverages.

Licensees are currently limited to no more than 24 events at a single location unless the licensee can clearly establish that additional events are in the best interest of the State and necessary to satisfy substantial public demand. The 24-event limit is in place so that an unlicensed location doesn't turn into a de facto bar through the use of catering authorizations. There is however, no limit on how many events a licensee may cater.

This bill expands the number of events that a licensee can cater at a single location from 24 events per calendar year to 52 events per calendar year.

Invitation-only events. Under current law, certain alcoholic beverage producers are allowed to conduct invitation-only events and provide their product directly to consumers, free of charge for which a caterer's permit authorization has been issued. Requests for attendance at the event are required to be by invitation sent to consumers over 21 years of age and all attendees are required to be over 21 years of age or older. The total number of guests shall not exceed 600 people and the duration of the event of any event shall not exceed four hours. The licensee is also required to apply and provide specified information to the Department of ABC at least 30 days prior to the event.

This bill would instead require the application and specified information to be submitted 90 days prior to the event.

Prior/Related Legislation

SB 389 (Dodd, 2021) would authorize the holder of a retail on-sale license to sell alcoholic beverages for off-sale consumption for which their license permits on-sale consumption, as specified. (Pending in the Senate Governmental Organization Committee)

SB 561 (Dodd, 2021) would authorize an alcohol manufacturer to share a common licensed area with multiple retailers, subject to various requirements. (Pending in the Senate Governmental Organization Committee)

SB 793 (Wiener, 2021) authorizes the Department of ABC to issue a music venue license that would allow the licensee to sell beer, wine, and distilled spirits for consumption on the premises in a music entertainment facility, as defined. In addition, the bill would authorized specified alcohol licensees to sell alcoholic beverages for consumption within an entertainment zone, as defined. (Pending in the Senate Governmental Organization Committee)

AB 61 (Gabriel, 2021) among other things, requires the Department of ABC to adopt rules to extend certain temporary relief measures relating to expanded outdoor dining areas and outdoor to-go sales privileges. (Pending in the Assembly Governmental Organization Committee)

AB 1242 (Bauer-Kahan, 2021) would authorize a bona fide public eating place holding an on-sale general license or a bona fide public eating place holding an on-sale license to sell the alcoholic beverages for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer prepackaged container, as long as those alcoholic beverages are sold in conjunction with a meal. (Pending in the Assembly Governmental Organization Committee)

AB 609 (Santiago, Chapter 205, Statutes of 2018) extends the sunset date for five years, from 2018 to 2023, for a specific provision of the ABC Act, which permits specified licensees (distilled spirits manufacturers and winegrowers) or an authorized agent, to provide, free of charge, entertainment, food, and distilled spirits, wine, or nonalcoholic beverages to consumers at an invitation-only event, held on specified premises, in connection with the sale or distribution of wine or distilled spirits, as provided.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

California Travel Association
Central City Association
City and County of San Francisco
City of Alameda
City of Murrieta
City of Palm Springs
Diaego
Marin Council of Chambers
Mill Valley Chamber of Commerce & Visitor Center
Napa Valley Vintners
San Francisco Chamber of Commerce
Santa Monica Chamber of Commerce
Southwest California Legislative Council
Tiburon Peninsula Chamber of Commerce
Westside Council of Chambers of Commerce

OPPOSITION:

Alcohol Justice
California Alcohol Policy Alliance

ARGUMENTS IN SUPPORT: According to the City and County of San Francisco, "with indoor service severely limited to-date, outdoor dining on sidewalks and in curb lanes has been critical to the survival of San Francisco's restaurants and bars over the past year. Even with the prospect of full indoor reopening in the near future, outdoor service will continue to play a vital role in helping these businesses pay off outstanding rent and other debts accrued during the pandemic. SB 314 is a critical piece of legislation that will directly respond to the immediate challenges facing San Francisco's nightlife sector. The ability to

continue serving alcohol in outdoor areas is vital to the industry's survival. The bill's catering reforms will help businesses statewide employ creativity to generate additional revenue during our economic recovery and in the years beyond."

According to the California Travel association, "when the dust settles after the pandemic, many of our local businesses will be one step away from bankruptcy, and easing these restrictions will be critical to their success after the pandemic and beyond. California must ensure that our small restaurants and bars can remain open to the public for years to come by creating new and flexible ways to own and operate a business within the hospitality industry. We cannot continue weighing down our small businesses with unnecessary and outdated regulations that do not serve the public. SB 314 will act as a lifeline for many small businesses as we move out of the strict stay-at-home orders."

ARGUMENTS IN OPPOSITION: The California Alcohol Policy Alliance is opposed to SB 314, "because it is another over-reaching grab bag of disparate issues opportunistically promoted by the alcohol industry. It is nothing more than a dangerous deregulation for the sake of corporate profits yet masquerading as phony [Covid-19] emergency management."