



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: May 18, 2021

Agenda Item 9B

Approvals:

City Manager CS

Dept. Head _____

Attorney _____

Finance JAL

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

Subject: *LETTER OF SUPPORT, SB 389 (DODD) – OFF-SALE ALCOHOL PRIVILEGES*

Fiscal Impact: Indirect. If SB 389 is passed, some local businesses would likely see an increase in revenues in 2021 resulting in marginal increased sales tax receipts.

Summary: Senate Bill 389 would make permanent certain pandemic allowances granted by the California Department of Alcoholic Beverage Control (ABC). Separate from the popular Temporary Catering Permit program, which allowed outdoor dining with the service of adult beverages in expanded areas, the ABC also suspended regulations that limited off-sale provisions of licenses. Effectively, more businesses have been permitted to sell “to-go” drinks during the pandemic. Attachment 2 provides the bill summary, and Attachment 3 provides a Senate Floor analysis.

Background: At its regular meeting on May 4, 2021, Council requested a review of SB 389 to determine whether to send a letter of support for the legislation.

“On-sale” licenses refer to business that sell alcohol to be consumed on-site. An “off-sale” license (commonly held by a grocer or liquor store) sells alcohol for consumption off-site. Some licenses, such as type 47 restaurant licenses, allow a limited version of both on- and off-sale. For instance, they could sell a sealed wine bottle to take home. During the pandemic, these businesses have also been allowed to sell mixed drinks in containers with lids. This allows them to sell higher ticket orders and feature custom options from their drinks menu.

Discussion: This bill would permanently allow for these additional off-sale rights for a licensee with a bona fide eating place. The bill would allow more flexibility for restaurants that matches the industry trend towards mobile ordering and food delivery options. One area of concern is the potential increase in enforcement needs for customers who order to go beverages and consume them in unauthorized locations, such as public sidewalks, parks, or within personal vehicles. Staff contacted OCSD regarding the bill, and the Sheriff is not taking a support or oppose position on this particular bill.

Recommended

Action: STAFF RECOMMENDS THAT the City Council determine whether to support this bill. If supported, authorize the Mayor to sign the attached support letter for SB 389.

- Attachments:**
1. Draft support letter for SB 389
 2. SB 389 Bill Text
 3. Senate Floor Analysis

Notification: Chamber of Commerce and Downtown Business Association (SCDBA)



San Clemente

CELEBRATING 90 YEARS OF INCORPORATION

ATTACHMENT 1

**OFFICE OF THE MAYOR
AND CITY COUNCIL**

Kathy Ward
Mayor

Gene James
Mayor Pro Tem

Laura Ferguson

Chris Duncan

Steve Knoblock

CITY MANAGER

Erik Sund

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

May 18, 2021

Senator Bill Dodd
State Senator, 3rd District
State Capitol
Sacramento, CA 95814

RE: SB-389 (Dodd) Alcoholic Beverages, off-sale privileges; Notice of Support

Dear Senator Dodd,

On behalf of the City Council of the City of San Clemente, I am writing to express support for SB 389, your measure that would extend support for local businesses including restaurants in their continued recovery from the economic impacts of the Covid-19 impacts.

Outdoor dining and the improved accessibility of "to-go" ordering has been a lifeline for our local businesses. The June 15th reopening date brings hope, but also some concern about changes in operational standards from state agencies such as the ABC. The increased flexibility during the pandemic will continue to be important as these businesses approach their peak season beyond June 15 in the summer of 2021. The City supports the making these regulatory changes to allow the continued full operation of "to-go" ordering.

While the pandemic has been incredibly difficult for all communities, outdoor dining and to-go ordering are enjoyed by our residents and have kept many of our businesses afloat. We support bills like this which consider opportunities to lessen regulatory burdens on local businesses and create flexibility for them to keep pace with changing technologies and customer behaviors and expectations.

Sincerely,

Mayor Kathy Ward

*"The Spanish Village
by the Sea"*

AMENDED IN SENATE APRIL 21, 2021

ATTACHMENT 2

AMENDED IN SENATE APRIL 6, 2021

SENATE BILL

No. 389

Introduced by Senator Dodd
(Principal coauthor: Senator Wiener)
(Principal coauthor: Assembly Member Friedman)

February 11, 2021

An act to add Section 23401.5 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as amended, Dodd. Alcoholic beverages: retail on-sale license: off-sale privileges.

Existing law, the Alcoholic Beverage Control Act, which is administered by the Department of Alcoholic Beverage Control, regulates the application, issuance, and suspension of alcoholic beverage licenses. Existing law authorizes the department to issue various types of licenses and prohibits a person from exercising the privilege which a licensee may exercise or performing under the authority of a license unless the person is authorized to do so by a license. Existing law authorizes a person holding an on-sale general license, with respect to beer and wine, and any on-sale license, with respect to the particular beverage or beverages mentioned in the license, to exercise the rights and privileges granted by an off-sale beer and wine license.

This bill would authorize the holder of a retail on-sale license *or a licensed beer manufacturer that operates a bona fide eating place* to exercise additional off-sale rights and privileges, subject to specified requirements. In this regard, the bill would authorize the licensee to sell alcoholic beverages for off-sale consumption for which their license

permits on-sale consumption if the beverages are in manufacturer prepackaged containers. Additionally, the bill would authorize a licensee to sell the alcoholic ~~beverages~~ *beverages, except beer*, for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer prepackaged containers if specified conditions are met, ~~including~~ *including, among other things*, that the beverages be packaged in a container with a secure lid or cap sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 23401.5 is added to the Business and
2 Professions Code, to read:
3 23401.5. Notwithstanding any other law to the contrary, the
4 holder of a retail on-sale license *or a licensed beer manufacturer*
5 *that operates a bona fide public eating place* may exercise the
6 following rights and privileges subject to the requirements of this
7 section:
8 (a) The licensee may sell the alcoholic beverages for off-sale
9 consumption for which their license permits on-sale consumption
10 provided the beverages are in manufacturer prepackaged containers.
11 (b) In addition to the privilege provided by subdivision (a), the
12 licensee may sell the alcoholic ~~beverages~~ *beverages, except beer*,
13 for off-sale consumption for which their license permits on-sale
14 consumption when the beverages are not in manufacturer
15 prepackaged containers if ~~both~~ of the following conditions are
16 met:
17 (1) The alcoholic beverages are packaged in a container with a
18 secure lid or cap sealed in a manner designed to prevent
19 consumption without removal of the lid or cap by breaking the
20 seal.
21 (2) *Wine is sold only in single-serve containers.*
22 (3) *The container is clearly and conspicuously labeled or*
23 *otherwise identified as containing an alcoholic beverage.*
24 ~~(2)~~
25 (4) (A) The following warning sign is posted in a manner that
26 notifies consumers of restrictions regarding open container laws:

1
2 Alcoholic beverages that are packaged by this establishment are
3 open containers and shall not be transported in a motor vehicle
4 except in the vehicle's trunk or, if there is no trunk, the containers
5 shall be kept in some other area of the vehicle that is not normally
6 occupied by the driver or passengers. This does not include a utility
7 compartment or glove compartment (See Vehicle Code Section
8 23225). Additionally, these beverages shall not be consumed in
9 public or in any other area where open containers are prohibited
10 by law.

11
12 (B) For purposes of this paragraph, "post" means to prominently
13 display on the premises, post online, or present in whatever manner
14 is necessary to ensure that the consumer purchasing, or delivery
15 person transporting, the beverages to which this section applies is
16 given notice of this warning.

17 (c) *Nothing in this section shall require a licensee to sell*
18 *alcoholic beverages for off-sale consumption whether or not the*
19 *alcoholic beverage is in a manufacturer-sealed prepackaged*
20 *container or otherwise.*

O

THIRD READING

Bill No: SB 389
Author: Dodd (D), et al.
Amended: 4/21/21
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE: 15-0, 4/20/21
AYES: Dodd, Nielsen, Allen, Archuleta, Becker, Borgeas, Bradford, Glazer,
Hueso; Jones, Kamlager, Melendez, Portantino, Rubio, Wilk

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Alcoholic beverages: retail on-sale license: off-sale privileges

SOURCE: Author

DIGEST: This bill authorizes the holder of a retail on-sale license or a licensed beer manufacturer that operates a bona fide eating place to sell alcoholic beverages for off-sale consumption for which their license permits on-sale consumption, as specified.

ANALYSIS:

Existing law:

- 1) Establishes the Department of Alcoholic Beverage Control (ABC) and grants it exclusive authority to administer the provisions of the ABC Act in accordance with laws enacted by the Legislature. This involves licensing individuals and businesses associated with the manufacture, importation, and sale of alcoholic beverages and the collection of license fees for this purpose.
- 2) Provides, under the ABC Act, for the issuance of various alcoholic beverage licenses, including the imposition of fees, conditions, and restrictions in connection with the issuance of those licenses.

- 3) Prohibits a person from exercising the privilege which a licensee may exercise or performing under the authority of a license unless the person is authorized to do so by a license.
- 4) Authorizes a person holding an on-sale general license, with respect to beer and wine, and any on-sale license, with respect to the particular beverage or beverages mentioned in the license, to exercise the rights and privileges granted by an off-sale beer and wine license.
- 5) Allows a person who has purchased and partially consumed a bottle of wine to remove the partially consumed bottle from the premises of an on-sale beer and wine public premises licensee.
- 6) Provides that any person under 21 years of age who purchases any alcoholic beverage, who consumes any alcoholic beverage in any on-sale premises, or who possesses any alcoholic beverage on any street or highway or in any public place or any place open to the public is guilty of a misdemeanor.
- 7) Provides that every person who sells, furnishes, gives, or causes to be sold, or given away any alcoholic beverage to any person under 21 years of age is guilty of a misdemeanor.
- 8) 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 holder of a retail on-sale license or a licensed beer manufacturer that operates a bona fide eating place to sell the alcoholic beverages for off-sale consumption for which their license permits on-sale consumption provided the beverages are in manufacturer prepackaged containers.
- 2) Authorizes the holder of a retail on-sale license to sell the alcoholic beverages for off-sale consumption for which their license permits on-sale consumption, except beer, when the beverages are not in manufacturer prepackaged containers if the following conditions are met:

- a) The alcoholic beverages are packaged in a container with a secure lid or cap sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal.
 - b) Wine is sold only in single-serve containers.
 - c) The container is clearly and conspicuously labeled or otherwise identified as containing an alcoholic beverage.
- 3) Requires any licensee who sells alcoholic beverages for off-sale consumption to "post" the following warning sign in a manner that notifies consumers of restrictions regarding open container laws:
- Alcoholic beverages that are packaged by this establishment are open containers and shall not be transported in a motor vehicle except in the vehicle's trunk or, if there is no trunk, the containers shall be kept in some other area of the vehicle that is not normally occupied by the driver or passengers. This does not include a utility compartment or glove compartment (See Vehicle Code Section 23225).
- 4) Defines "post" for purpose of this bill to mean prominently display on the premises, post online, or present in whatever manner is necessary to ensure that the consumer purchasing, or delivery person transporting, the beverages to which this bill applies is given notice of the warning in this bill.
 - 5) Provides that nothing in this bill requires a licensee to sell alcoholic beverages for off-sale consumption whether or not the alcoholic beverage is in a manufacturer-sealed prepackaged container or otherwise.

Background

On-Sale and Off-Sale Licenses. The Department of ABC issues a number of alcohol licenses that are available to individuals seeking to operate businesses that sell alcoholic beverages. Each license establishes specific responsibilities and privileges especially when it comes to "on-sale" and "off-sale" privileges.

Alcohol licenses are deemed "on-sale" if the license authorizes the sale of alcoholic beverages but requires that they are consumed on the premises. Some examples of "on-sale" businesses include bars and restaurants although restaurants do have some "off-sale" privileges. For example, under existing law restaurants are authorized to sell both wine and beer to customers for "off-sale" consumption.

On the other hand, alcohol licenses are deemed “off-sale” if the business sells alcoholic beverages sold at the establishment but are required to be consumed offsite. Some examples of “off-sale” businesses include liquor stores or grocery stores that sell alcoholic beverages. In addition, some licenses include both “on-sale” and “off-sale” privileges. Some examples are wineries and craft distilleries.

ABC Regulatory Relief. On March 19, 2020, the Department of ABC issued its first regulatory relief designed to support the restaurant industry in its efforts to assist California in slowing the spread of the Covid-19 virus. Among other things, the first regulatory relief allows licensees with on-sale privileges the privilege of selling those alcoholic beverages for off-sale consumption in manufacturer pre-packaged containers as to which their license permits on-sale consumption.

For example, a Type 47 restaurant is allowed to sell beer, wine, and distilled spirits for off-sale consumption, regardless of any condition on its license to the contrary and regardless of the statutory prohibition against on-sale licensees selling distilled spirits for off-sale consumption. Similarly, a Type 41 beer and wine restaurant licensee is allowed to sell beer and wine, but not distilled spirits, for consumption off the premises regardless of any conditions on its license that prohibit such sales.

In addition to selling manufacturer pre-packaged containers, the first regulatory relief allows licensees selling beer, wine, and pre-mixed drinks or cocktails not in manufacturers containers for consumption off the licensed premises when sold in conjunction with meals prepared for pick-up or delivery either by the licensee or by a meal provider. Any such alcoholic beverages need to be packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap. Containers with lids with sipping holes or openings for straws are not considered to be an appropriate container. Any licensee selling such beverages for off-sale consumption are required to prominently post warning in a manner that puts consumers on notice of limitations regarding open container laws.

While the regulatory relief allows restaurants the ability to sell both prepackaged alcoholic beverages and cocktails for consumption off the licensed premises, it did not diminish in any way the responsibility of the licensee to ensure that alcoholic drinks are being sold and delivered to persons under the age of 21. Restaurants are still fully responsible for ensuring that any customer who purchases alcoholic beverages are of legal age regardless of whether that customer purchases the alcohol in person or through any other means and regardless of whether the

customer picks up the alcoholic drinks at the restaurant or if the alcohol is delivered to their home.

Other states. Like California, most other state alcohol laws limit restaurants' sales of adult beverages to on-premises consumption. However, when business owners suspended their dine-in business to stop the transmission of the Covid-19 virus, many states began to allow alcohol sales with carryout and delivery meals. Currently, 33 states and the District of Columbia allow to-go sales of alcohol, including spirits and cocktails or cocktail kits. Other states allow for bottled beer and wine to be sold for consumption off-premises, but not mixed drinks or spirits.

According to the National Restaurant Association's, "2021 State of the Restaurant Industry Report," approximately seven out of 10 full service restaurants and half of fast-casual eateries offer alcohol for carryout or delivery. Around 20% of adult costumers, and about 30% of millennials, have added alcoholic drinks to a takeout or delivery order since the pandemic began. Furthermore, according to Technomic, a leading food service research firm, 58% of consumers surveyed said the ability to purchase alcoholic beverages with their takeout orders has a major impact on their choice of restaurant. Technomic also found that restaurant operators expect alcohol to-go sales to settle in at an average of 21% of total alcohol sales once the pandemic subsides.

Iowa and Ohio have already passed legislation to permit alcohol sales for off-premise consumption past the pandemic and 37 other state legislatures are currently considering similar legislation.

Comments

Purpose of the bill. According to the author's office, "SB 389 builds upon the current regulatory relief by allowing restaurants and bars the ability to sell both prepackaged alcoholic drinks and pre-mixed drinks to costumers for consumption off the licensed premises. The ability to include alcoholic drinks with to-go orders has been helpful for many restaurants during the Covid-19 Pandemic. In addition, it is very likely that even when consumers are allowed to dine in restaurants, there will be those individuals who will still prefer to get their cocktails delivered rather than having to gather in an enclosed space. This bill will provide that opportunity."

The author's office further argues that, "nothing in this bill changes any laws related to drinking and driving or drinking in public. In addition, nothing in this

bill forces restaurants or bars to take advantage of this bill. This bill simply provides an opportunity.”

Related/Prior Legislation

SB 314 (Wiener, 2021), among other things, authorizes the Department of ABC for 365 days from the date the Covid-19 state of emergency order is lifted, or longer if the licensee has a pending application for permanent expansion of their premises, allow licensees to continue to exercise license privileges in an expanded licensed area authorized pursuant to a Covid-19 temporary catering permit, as provided. (Pending on the Senate Floor)

AB 1242 (Bauer-Kahan, 2021) authorizes 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 Appropriations Committee)

SB 254 (Portantino, 2017) would have prohibited a certified delivery network, as defined, from delivering alcoholic beverages sold by an off-sale retail licensee to persons within this state without first obtaining a license issued by the Department of ABC. (Died in the Assembly Governmental Organization Committee)

AB 1470 (Evans, Chapter 535, Statutes of 2009) allowed a person who has purchased and partially consumed a bottle of wine to remove the partially consumed bottle from the premises of an on-sale beer and wine public premises licensee.

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

SUPPORT: (Verified 5/4/21)

83 Proof
Alchemist Bar & Lounge
Athletic Club Oakland
Azucar Lounge
Blackbird
California Chamber of Commerce
California Craft Brewers Association
California Music & Culture Association

California Restaurant Association
Diageo
Distilled Spirits Council of the United States
Dogpatch Saloon
El Rio
Elda Agave, LLC
ELIXIR Saloon
Future Bars Group
Lord George
Madrone Art Bar
Mario & John's Tavern
Pop's Bar
Red Window Bar
Royale SF
S&T Revelry Holdings Inc.
San Francisco Athletic Club
San Jose Downtown Association
SF Bar Owner Alliance
Smuggler's Cove
Southside Spirit House
Southwest California Legislative Council
The Bar on Dolores
The Little Shamrock
The Page
The Sea Star
Tony Nik's Café
Wine Institute
Zeki's Bar
Various individuals

OPPOSITION: (Verified 5/4/21)

Alcohol Justice
California Alcohol Policy Alliance

ARGUMENTS IN SUPPORT: According to the California Restaurant Association, "California restaurants remain on serious lock-down, as they are only allowed to utilize extremely limited on-site space due to current state-imposed capacity restrictions and requirements for physically distanced tables. Those continued restrictions for on-site dining have left many, many restaurants barely able to hang on. SB 389 modernizes alcohol laws to better accommodate the

current operating restrictions imposed upon restaurants and provides them with the *option* to use this, as one of several, economic lifelines, and ways to serve their customers with proper conditions and protections for public safety.”

According to the SF Bar Owner Alliance, “bars were hit disproportionately hard by pandemic in the last year with San Francisco bars seeing a loss of four out of five jobs. Many of them were unable to open for on premise service over the past year, and because of this were cut out almost completely from PPP funds. Our industry was utterly devastated, and we need robust help from the government if we ever hope to recover. For many bars, their only source of revenue was through selling to go alcohol allowed by ABC’s emergency regulatory relief. SB 389 would make permanent this relief, including allowing bars to sell to go beer, wine, spirits and cocktails. These would be incredibly promising revenue streams to our beleaguered industry. Furthermore, customers have now grown accustomed to ordering food and beverages to go. We believe this trend will remain in the future to some degree. SB 389 allows bars to adapt to the changing customer behavior, which – we believe – will be required to continue to stay in business.”

ARGUMENTS IN OPPOSITION: Alcohol Justice is opposed to the bill because “cocktails-to-go are a bad idea that benefit a licensee’s bottom line while threatening public health and safety. Cocktails-to-go have been wisely prohibited since the link to death and injury from drinking and driving became evident. The alcohol industry, constantly seeking opportunities to relax restrictions, have used the COVID-19 pandemic as an excuse to demand this change. It will always be a bad idea and should never become a permanent privilege.”

Prepared by: Felipe Lopez / G.O. / (916) 651-1530
5/5/21 15:25:34

**** END ****