

City of Oakland
Agenda Report

07/11/07 1:53

To: Council President Ignacio De La Fuente and Members of the Rules Committee
From: John Russo, Oakland City Attorney
Date: May 3rd, 2007

Re: A RESOLUTION IN SUPPORT OF AB960 (HANCOCK) LIQUOR STORE
AMORTIZATION BILL

Summary

The Council is being asked to adopt a resolution in support of AB960 introduced by Assembly member Loni Hancock to amortize liquor store businesses in over concentrated, high crime areas in Oakland.

Key Issues and Impacts

Oakland has more than 300 liquor stores. Problem liquor stores have too often been the nexus for nuisance behavior such as littering, loitering, drug dealing and gun violence in many of Oakland's neighborhoods. AB960 will give local cities control of liquor store concentration by permitting cities to phase out nuisance liquor stores in ten years or less through an amortization process.

Cities and Counties would adopt local procedures (e.g., by ordinance or regulations) providing detailed procedures for implementation of the bill. The local legislation could, for example, provide:

- more specific guidance for amortization periods (e.g., formulas based on amortization criteria);
- mechanisms for obtaining information necessary for determining appropriate amortization periods (e.g., questionnaires to obtain information regarding the amortization criteria, i.e., the depreciation value; the premises remaining useful life; the length and remaining term of any lease);
- noticing requirements of property owners/others affected by amortization determinations;
- appeal rights of property owners/others affected by amortization determinations;
- other procedural requirements/fees for administrative costs of program implementation.

Action Requested of Council

The City Council is requested to adopt the attached Resolution in support of AB 960 (Hancock) to amortize liquor store businesses in over concentrated, high crime areas in Oakland.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John Russo', written in a cursive style.

John Russo
Oakland City Attorney

ASSEMBLY BILL

No. 960

Introduced by Assembly Member Hancock

February 22, 2007

An act to amend Section 23790 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 960, as introduced, Hancock. Alcoholic beverages: licensing restrictions.

The Alcoholic Beverage Control Act imposes upon the Department of Alcoholic Beverage Control the responsibility to administer and enforce state laws with respect to alcoholic beverages, including the implementation of alcoholic beverage licensing. Among other things, the act prohibits the issuance of any retail license for the sale of alcoholic beverages for any premises that are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. The act provides that premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under specified conditions.

This bill would authorize a county or city to provide for a reasonable amortization period and termination of, or imposition of conditions on legal nonconforming uses pursuant to, a validly enacted zoning ordinance. These provisions would apply to premises that had been used in the exercise of rights and privileges conferred by the retail license at a time prior to the effective date of the zoning ordinance that are located in areas of undue concentration, as defined.

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 23790 of the Business and Professions
2 Code is amended to read:

3 23790. (a) No retail license shall be issued for any premises
4 which are located in any territory where the exercise of the rights
5 and privileges conferred by the license is contrary to a valid zoning
6 ordinance of any county or city.

7 (b) Premises *that are not located in areas of undue*
8 *concentration, as defined in Section 23958.4*, which had been used
9 in the exercise of those rights and privileges at a time prior to the
10 effective date of the zoning ordinance may continue operation
11 under the following conditions:

12 (a)

13 (1) The premises retain the same type of retail liquor license
14 within a license classification.

15 (b)

16 (2) The licensed premises are operated continuously without
17 substantial change in mode or character of operation.

18 (c) For purposes of this subdivision, a break in continuous
19 operation does not include:

20 (1) A closure for not more than 30 days for purposes of repair,
21 if that repair does not change the nature of the licensed premises
22 and does not increase the square footage of the business used for
23 the sale of alcoholic beverages.

24 (2) The closure for restoration of premises rendered totally or
25 partially inaccessible by an act of God or a toxic accident, if the
26 restoration does not increase the square footage of the business
27 used for the sale of alcoholic beverages.

28 (d) *Premises located in areas of undue concentration may be*
29 *subject to amortization and termination, or imposition of validly*
30 *enacted zoning requirements, if a city or county makes a public*
31 *determination that the following conditions exist:*

32 (1) *The premises are a nuisance, as defined by state or local*
33 *law.*

34 (2) *The premises are either:*

- 1 (A) Located in a crime reporting district that has a 20 percent
2 greater number of reported crimes, as defined in subdivision (c)
3 of Section 23958.4, than the average number of reported crimes
4 as determined from all crime reporting districts within the
5 jurisdiction of the local law enforcement agency.
- 6 (B) Located within 200 feet of a school.
- 7 (e) (1) Cities or counties electing to amortize premises pursuant
8 to subdivision (d) must provide an amortization period that is
9 reasonable based on, but not limited to, the following factors:
- 10 (A) The original cost of the premises.
- 11 (B) The depreciation value of the premises.
- 12 (C) The premises' remaining use life.
- 13 (D) The length and remaining term of any lease.
- 14 (E) The harm to the public if the premises' use remains beyond
15 the prescribed amortization period.
- 16 (2) The maximum amortization period shall be 10 years.
- 17 (3) In any amortization process the property owner will retain
18 ownership of the property that can be sold or reused for a use that
19 is consistent with a valid zoning ordinance of any city or county.

OAKLAND CITY COUNCIL

James F. Hodgson
City Attorney

6715R12 11:2:36

RESOLUTION NO. _____ C.M.S.

RESOLUTION IN SUPPORT OF AB 960 (HANCOCK) LIQUOR STORE AMORTIZATION BILL

WHEREAS, according to the California Department of Alcohol Beverage Control, Oakland has an over concentration of liquor stores in high crime areas; and

WHEREAS, six of the seven Council Districts in Oakland have an over concentration of liquor stores; and

WHEREAS, there are currently over 300 liquor stores operating in Oakland, 65 more than the state limit allows; and

WHEREAS, problem liquor stores have too often been the nexus for nuisance behavior such as littering, loitering, drug dealing and gun violence in many of Oakland's neighborhoods; and

WHEREAS, AB 960 would grant local governments more authority in over concentrated, high crime areas by permitting cities to phase out nuisance liquor stores in ten years or less through an amortization process; therefore be it

RESOLVED: that the City of Oakland declares its support for AB 960 (Hancock) to reduce liquor stores in over concentrated, high crime areas through an amortization process; and be it

FURTHER RESOLVED: that the City Council directs the City Administrator and the City's lobbyist to advocate for the above position in the State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California