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October 25, 2021
Resolution 007-2021-SBC

RESOLUTION CALLING ON BOARD OF SUPERVISORS TO ELIMINATE DEEMED APPROVED USE FEE AS PART OF ECONOMIC MITIGATION WORKING GROUP TASK FORCE RECOMMENDATIONS

WHEREAS, in 2006 San Francisco Board of Supervisors passed BOS File #051792 and #060205 establishing a Deemed Approved Use Ordinance (DAO) to address growing concerns around unruly behavior surrounding off-sale alcohol sales, and the negative impact it was having on communities. The legislation mandated that off-sale alcohol license holders meet a series of performance measures to address litter, graffiti, unruly behavior, disturbance of the peace, illegal drug activity, illegal sale of firearms, public drunkenness, harassment of passersby, gambling, prostitution, sale of receipt of stolen goods, or thefts, assaults or batteries on the premises; and,

WHEREAS, the DAO greatly impacted business owners and residents in communities of color. Research shows that concentrations of convenience and liquor stores are the direct result of residential segregation and land use regulations used to enforce racial segregation. One study assessing the impact of Homeowner Lending Corporation maps found that in six Northern California communities, “the lowest-rated HOLC areas were also found to have far higher concentrations of off-premise alcohol outlets (RR 9.6) than did the highest-rated HOLC communities”;¹ and,

WHEREAS, unlike most other local jurisdictions that implemented deemed approve use policies for both off-sale and on-sale alcohol licenses (which include bars and restaurants), San Francisco’s DAO only targets off-sale alcohol license holders. A 2009 study noted this distinction among many Bay Area jurisdictions that had adopted DAOs: Oakland (with the exception for restaurants making a majority of revenue from food sales), Richmond, Petaluma, Santa Cruz, Vallejo, and Alameda County all applied DAOs to both on-sale and off-sale licenses;² and,

WHEREAS, in 2019, in response to several City mandated tobacco control laws that once again greatly impacted convenience and liquor stores, BOS Resolution #190775 (329-19) directed the Office of Small Business to convene a Small Business Economic Mitigation Working Group (EMWG) to come up with a

¹ <https://www.sciencedirect.com/science/article/pii/S2352827320303062>

² <https://northcoastalpreventioncoalition.org/wp-content/uploads/2016/04/The-Case-for-Deemed-Approved-ordinances.pdf>

set of recommendations to address the adverse impacts that tobacco control laws have on small businesses;³ and,

WHEREAS, the EMWG made a set of 15 recommendations including Recommendation 4: Elimination of the DAO which would reduce administrative burdens and eliminate the DAO fee (currently \$284) for many of the same businesses that typically hold tobacco retail license holders;⁴ and,

WHEREAS, the EMWG found that data showed high rates of compliance with the DAO standards; and,

WHEREAS, since the passage of the DAO, the State of California passed Buildings and Professions Code 25612.5 Retail Operating Standards that set statewide standards for off-sale alcohol license holders that include 10 conditions to address public nuisance, including required signage, graffiti and trash removal, which are duplicative to the DAO;⁵ and,

WHEREAS, since the passage of the DAO, San Francisco has established several additional programs to abate public nuisances and bolster commercial corridors including Healthy Retail SF, SF Shines, and the Invest in Neighborhoods program; and,

WHEREAS, on February 27, 2020 the Board of Supervisors Public Safety and Neighborhood Services Committee held a hearing to review the 2006 DAO and reevaluate its effectiveness. The Committee questioned the necessity of the DAO given the duplicative state standards, the other programs enacted to address concerns related to nuisances, and the minimal amount of revenue produced by the DAO;⁶ and,

WHEREAS, at the Committee hearing, City staff confirmed that there had been no administrative hearings regarding the DAO since the adoption of the ordinance in 2006; and,

WHEREAS, at the Committee hearing, Supervisors noted that the fee appears inequitable and should be reassessed; and,

WHEREAS, during the COVID-19 pandemic, the 'Sixth Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency Dated February 25, 2020' mandated a curfew for small off-sale alcohol license holders, holding them accountable for unruly gatherings outside of their businesses that could increase the transmission of COVID-19, behavior that is a result of larger racial and social inequities and not because of business hours and inventory;⁷ and,

³ <https://sfosb.org/sites/default/files/documents/SBC/EMWG%20-%20Report%20-%2020122020.pdf> and <https://sfgov.legistar.com/View.ashx?M=F&ID=7572535&GUID=E8E18713-7106-4BCC-9478-C9A6BD919727>

⁴ <https://sfosb.org/file/11148>

⁵ <https://www.abc.ca.gov/education/merchant-education/off-sale-licensee-informational-guide/retail-operating-standards-2/>

⁶ https://sanfrancisco.granicus.com/player/clip/35300?view_id=178&redirect=true

⁷ https://sfmayor.org/sites/default/files/Supplement_v6_03272020.pdf

WHEREAS, the curfew, which only applied to small grocers and corner stores that sell off-sale alcohol and are often a main source of groceries in neighborhoods with minimal access to fresh food, dramatically impacted small businesses in the midst of the pandemic; and,

WHEREAS, during the COVID-19 pandemic many businesses had to adapt their services to remain viable so the City re-envisioned open space to assist businesses who needed to conduct business outdoors, but lacked outdoor space, through the use of parklets, shared spaces, and sidewalks; and,

WHEREAS, activities in parklets and shared spaces that were previously prohibited such as drinking alcohol and restaurants serving alcohol ‘to-go’ were made permissible; and,

WHEREAS, the consumption of alcohol in parklets and shared spaces, and serving alcohol ‘to-go,’ has not resulted in significant public nuisance, litter, graffiti, and other concerning behaviors that were previously associated with off-sale alcohol sales; and,

WHEREAS, California is one of 33 states to have loosened restrictions on to-go alcoholic beverages;⁸ and,

WHEREAS, businesses using open space, parklets, and selling alcohol ‘to-go’ have been lauded as bolsters to the local economy and assets to the neighborhood; and,

WHEREAS, recently passed statewide legislation (SB 389) would extend the allowance of restaurants and businesses with on-sale alcohol licenses (Type 41 and 47) to also have off-sale alcohol license privileges through 2026;⁹ and,

WHEREAS, recently passed statewide legislation (SB 314) extended the flexibility of bars and restaurants in how and where they serve alcohol outside through 2024, which is currently permitted under temporary measures because of COVID-19;¹⁰ and,

WHEREAS, corner and convenience stores are still subject to the DAO but restaurants and bars that are now able to sell off-site alcohol, are not; and,

WHEREAS, corner and convenience stores are not permitted under the DAO to allow consumption of off-site alcohol on their premises but restaurants and bars, which were granted temporary catering licenses, can now sell off-site alcohol for consumption on ‘property that is adjacent to the licensed premises;’¹¹ and,

⁸ <https://sanfrancisco.cbslocal.com/2021/05/11/covid-recovery-sb389-permanent-to-go-cocktail-sales-passes-state-senate/>

⁹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB389

¹⁰ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB314

¹¹ <https://www.abc.ca.gov/fourth-notice-of-regulatory-relief/>



CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR

OFFICE OF SMALL BUSINESS
SMALL BUSINESS COMMISSION
REGINA DICK-ENDRIZZI, DIRECTOR

THEREFORE, be it resolved, that the DAO and fee can no longer be justified given the inequitable application of off-sale alcohol licenses that result in the disparate treatment between liquor stores and convenience stores in contrast to restaurants and bars; and,

THEREFORE; be it resolved, that the SF Board of Supervisors acknowledge the underlying racial inequities that exist in the current application of the DAO which regulates corner and convenience stores but does not apply to restaurants and bars that now have the same; and,

THEREFORE; be it resolved, that the SF Board of Supervisors eliminate the DAO and fee.

I hereby certify that the Small Business Commission ADOPTED the foregoing Resolution on October 27, 2021.

A handwritten signature in black ink that reads "Regina Dick-Endrizzi". The signature is written in a cursive, flowing style.

Regina Dick-Endrizzi
Director, Office of Small Business

Ayes – Adams, Dickerson, Dooley, Huie, Laguana, Ortiz-Cartagena, Zouzounis
Nays – None