



CITY OF MODESTO

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**Public Convenience & Necessity  
Policies & Procedures for  
Alcoholic Beverage Control (ABC) Licenses**

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*Approved* \_\_\_\_\_

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## CITY OF MODESTO

### POLICES & PROCEDURES FOR APPLICATIONS OF PUBLIC CONVENIENCE AND NECESSITY FOR ABC LICENSES

#### 1. Introduction

Recognizing that over concentration of liquor licenses (Alcoholic Beverage Control licenses) can contribute to criminal and other adverse behavior in neighborhoods, the legislative added section 23958.4 to the Business and Professions Code in the early 1990s. This section allows the state department of Alcoholic Beverage Control (ABC) to consider over concentration as part of the application review process. In over concentrated areas, ABC requires the local governing body to make a determination that the Public Convenience and Necessity (PCN) will be met by the issuance of an ABC license (for certain license types).

The following policies and procedures apply when an Applicant is referred to the City of Modesto, as the local governing body, by ABC for a determination of Public Convenience and Necessity, pursuant to §23958, et seq and §23817.5-§23817.8 of the California Business and Professions Code. These policies and procedures describe the application, research, hearing and appeal process associated with processing an application for Public Convenience and Necessity.

An application for a transfer or location change will be handled in the same manner as a new PCN, pursuant to these policies and procedures. Individuals applying for a transfer may be required to obtain letters from nearby residents and business owners that might be impacted by the approval of the transfer.

The City shall make the final determination as to whether or not a proposed PCN request will be approved or denied under the provisions/conditions set forth by this policy and in accordance with the designated Hearing Officer's decision.

#### 2. Definitions

- a. **Applicant:** Developer or property/business owner.
- b. **City:** The City of Modesto.
- c. **Fee:** Required fee, as set by the City Council - \$1,000.00.
- d. **Hearing Officer:** City Manager, or designee, authorized to review recommendation reports, conduct hearings, and render a decision pursuant to these policies and procedures.
- e. **PCN:** Public Convenience and Necessity.
- f. **Transfers:** Pursuant to these policies and procedures, a location "transfer" has occurred when the: 1) proposed site has had an active license within the preceding twelve (12) months; or 2) proposed site has had an active license for at least thirty-six (36) of the last sixty months.

### 3. Application Process

- a. **Application.** The applicant shall submit four (4) copies of the entire application packet (refer to section 3.b. below) in the form attached hereto as Exhibit “A” to the City Clerk’s Office together with a processing fee, as set forth herein and amended from time to time. The fee is for the purpose of application processing, other preliminary costs, retention of appropriate consultants, and compensation of staff time devoted to processing the PCN application.
- b. **Application Packet.** The application packet shall include the following documents:
  - \$1,000 Application Fee
  - City of Modesto PCN application [four (4) copies]
  - Filed ABC Application [four (4) copies]
  - ABC Application Worksheet [four (4) copies]
  - Location Maps [four (4) copies] *Refer to section 3.d. for additional guidance.*
- c. **Project Review.** Applicant and the PCN Investigation Group may discuss the pending application and may request additional information from the applicant and/or submission of a revised application.
- d. **Location Maps.** Location maps for each proposed PCN must be provided with the application. Location maps should be provided in the following formats:
  - Site plan depicting the layout of the applicant property [8.5” x 11” paper]
  - Area map showing the surrounding context located within 300 feet of the applicant property. The area map should outline nearby businesses, within the impacted geographical area, which sell/furnish alcoholic beverages. [8.5” x 11”]
- e. **Project Initiation.** The applicant submits the application to the City Clerk’s Office. The City Clerk reviews the application for completeness prior to accepting it. The applicant may be required to complete missing information as requested in the PCN application. Once the application is deemed complete, the City Clerk collects the application fee and forwards the application to the City Manager’s Office.

The City Manager, or his designee, reviews the application for completeness and forwards the PCN application to the Police Department, the Community & Economic Development Department and the Parks, Recreation & Neighborhoods Department for review. Each department submits a summary report to the City Manager’s Office within thirty (30) days of receipt or by the timeline established in the City Manager transmittal letter.

#### 4. Investigative Process

The following section outlines the review process for each of the departments involved in PCN applications.

##### **a. City Clerk:**

- Review PCN application for completeness.
- Accept \$1,000.00 application fee from applicant.
- Forward four (4) copies of the application to the City Manager's Office.

##### **b. City Manager:**

- Review the PCN application for completeness.
- Send copies of the PCN application to the Police Department, Community Development Department, and Parks, Recreation & Neighborhoods Department.

##### **c. Community & Economic Development Department:**

- Research zoning, permits and other documents pertaining to the use of the property.
- Provide a staff summary report with recommendations to approve or deny the application to the City Manager/designee.

##### **d. Police Department**

- Research crime statistics in applicant's proposed area of business.
- Provide a staff summary report with recommendations to approve or deny the application to the City Manager/designee.

##### **e. Parks, Recreation & Neighborhoods Department**

- Research proximity to parks, community centers, recreation facilities and schools. Contact staff assigned to relevant City recreation areas and review pertinent incident reports from staff.
- Provide a staff summary report with recommendations to approve or deny the application to the City Manager/designee.

#### 5. Transfers

**Transfer of licenses at or to existing locations.** Any changes to the license type shall be deemed the same as applying for a new license.

## 6. Administrative Hearing

When all departments have responded to the City Manager in writing, the Hearing Officer will review each department's recommendations and render a decision.

- a. **Approval.** If the Hearing Officer determines the application meets the approval criteria and insufficient information has been submitted that would justify denial, a decision to grant a letter of PCN can be made. An Administrative Hearing will be held during which the applicant can submit any additional information not contained on the application form. Once approved, the Hearing Officer notifies the applicant in writing that a determination of "public convenience and necessity" has been made and the license should be granted. A copy of this determination letter is also forwarded to the Alcoholic Beverage Control District Office and the impacted City departments.
- b. **Denial.** If the Hearing Officer determines the application does not meet the conditions for approval, the Hearing Officer will hold an Administrative Hearing where the Applicant may present oral communication or other evidence supporting approval to the Hearing Officer.

If, after the Administrative Hearing, the Hearing Officer rules for denial, a written determination of denial is mailed to the Alcohol Beverage Control District Office with a copy to the applicant. The Hearing Officer determination is final unless the applicant files an appeal within the specified time period.

- 1) *Appeal.* The applicant can appeal a denial decision to the City Council within fifteen (15) working days of the date of denial. An appeal is made by written notification to the City Clerk and payment of a \$100.00 processing fee. The City Clerk will schedule the Applicant to appear before the City Council within a reasonable amount of time.

## 7. PCN Re-Application Process

The PCN application is directed at the "location" rather than the "applicant". As such, a denied PCN request or appeal must wait a period of one year from the denial decision date prior to re-applying for a permit for the same location.