

# 12-6-06 DRAFT

Washington State Liquor Control Board

## Issue Paper

### SBW Restaurant License Density

#### Workgroup Recommendations

Date: December \_\_\_\_, 2006

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#### Workgroup Members/Participants:

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The purpose of this issue paper is to summarize the recommendations of the Spirits/Beer/Wine (SBW) Restaurant License Workgroup. This workgroup of key stakeholders and Liquor Control Board (LCB) staff has met over the last nine months to address three key questions:

- What is the optimal number of SBW restaurant licenses in the state and/or particular geographical area?
- How should LCB determine that the number of SBW restaurant licenses is adequate for the needs of the community?
- What is the formula or objective criteria for making this determination?

The workgroup recommends a short-term strategy and long-term goals to improve the licensing and regulation of businesses that receive liquor licenses to sell beer, wine and spirits by the drink.

## I. BACKGROUND

### A. Current Law

When liquor by the drink was authorized by state law (Initiative 171) in 1949, a limit was set in statute to control the number of establishments that could be licensed for that purpose. The limit was a formula based on 1 license for every 1,500 persons based on national census data. When the law was passed that cap was 1,154 licenses based on the 1940 population census data. The limitation applied to licenses statewide.

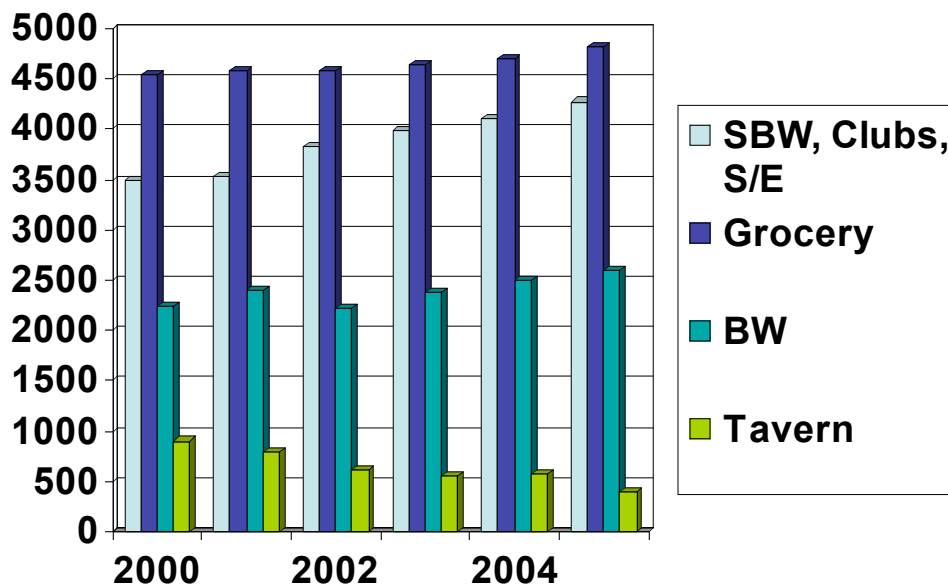
The 2006 legislature adjusted the limitation to 1/1450 population. This adjustment was made to allow the Liquor Control Board to explore alternatives to a statewide cap on restaurants liquor

licenses. Current law links the 1/1450 ratio to the yearly population as determined by the Office of Financial Management.

In addition, the Board has authority to refuse a spirits, beer, and wine restaurant license application if it determines there are sufficient establishments serving spirits by the drink to meet the needs of a community. As part of the licensing process, the Board notifies the local government of these license applications and takes input from them on whether to issue or not issue this type of license. This is another tool available to control the number of spirits, beer, and wine restaurant licenses and would not be diminished by a change in or elimination of the cap.

## B. Historical Trends

Retail liquor licenses have shown a steady increase over the past several years. Since 2000, the total number of retail liquor licenses increased from 11,244 to 12,331. Of this increase, spirits, beer, and wine restaurant licenses showed the largest increase, which was double the increases in the other retail license categories. This trend is expected to continue for the near future.



There are 74 cities with a population over 10,000. Using the measure of 1 spirits, beer, and wine restaurant license for 1450 population applied to each city, over half the cities (43) exceed this ratio and have more spirits, beer, and wine restaurants than the state wide ratio would allow. Whether this ratio represents an appropriate density was not addressed by this work group.

Five cities, including Seattle, have a concentration of spirits, beer, and wine restaurant licenses over 200% in excess of the ratio. Cities from across the state are represented in the category of cities that exceed the statewide ratio when applied to individual cities.

## **C. Expected Result**

At the current rate of growth in this license type, it is expected that the cap will be reached in another year. Once the cap is reached, the Board will have to deny applications for this license type, regardless of the location of the proposed premises. This could have had undue adverse economic impact to the applicants and local communities.

## **II. WORKGROUP FINDINGS & ANALYSIS**

### **A. Statement of Need (from Aug 28 Meeting)**

1. Current statewide license-to-population formula does not address local community concerns over negative impacts (actual and perceived) resulting from concentration of certain liquor license types in a geographical locality.
2. The existing liquor licensing process provides local government input on a case-by-case basis and does not encourage input based on long-term strategic planning by local government.
3. Other states' use of a ratio, such as 1 per 1500 (or other license number management methods on statewide or city/county level) is not consistent. In a survey conducted by LCB in November of 2005, out of 29 states, plus British Columbia, only 9 addressed the density issue and out of those 9 there is not a consistent approach. For instance: Oregon had a ratio of 1 per 2,000 and then dropped it in the 90's because they were issuing new types of licenses to get around the limit; Idaho allows 1 license per 1,500 with cities less than 3,000 population allowed 2 and California issues licenses based on area population growth.
4. Research shows "density" is linked with negative impacts. However, there is no Washington-specific research or studies available.
5. Establishments (Restaurants) that serve alcohol and provide late-night entertainment are of more concern than other establishments (restaurants that don't have late-night entertainment). Licensing and enforcement strategies must be developed at the state and local level. Local governments cannot identify these businesses through the current liquor licensing process. Developing an alternative formula to the current state-wide cap on the number of licenses would not solve the identification problem.

### **B. Findings (from Aug 28 Meeting)**

1. Current statewide cap does not address the specific needs of local governments and communities for certain types of liquor licensees and the changing business and economic trends.
2. Local government is in the best position to evaluate the community needs for an adequate number of liquor licenses in its jurisdiction.
3. A concept of "community" based on geographical boundaries alone does not take into account economic development interests of local jurisdictions.

4. “Reasonable needs” of the community varies depending on the license type.
5. Licensees’ business models change based on customer demographics (i.e., younger crowds coming out later in evening).
6. Economic development creates more mixed land use (commercial & residential) and split-use business operations (restaurant turned nightclub).
7. Local governments’ internal review process may not involve timely coordination of interested departments.
8. Local governments’ internal review process does not involve and encourage timely community input.
9. Type of business establishment is a better risk indicator than the number of licenses. (E.g., nightclub-type establishments)
10. Each local government’s decision differs on resource allocation and regulatory approach to dealing with problem liquor-licensed establishments. (Examples: employment of off-duty police officers as security staff, business licensing, nuisance-abatement mechanisms, entertainment/music political philosophy and sensitivity to First Amendment scrutiny). Local jurisdictions receive revenue from LCB but this revenue is not necessarily dedicated to addressing alcohol-related services.
11. “Adequately served” definition? Currently the need for restaurants vs. need for SBW restaurants operating as nightclubs is different in each community. And the community need for restaurants vs. off-premise liquor licensed businesses is different. What constitutes “adequately served” needs to be clearly stated.

### **C. Workgroup Conclusion: Answers to Key Questions**

**1: What is the optimal number of SBW restaurant licenses in the state and/or particular geographical area?** There is no specific number of SBW restaurant liquor licenses that would be considered optimal for the state. Restaurant businesses are part of communities’ economic health. The number of these businesses licensed to sell alcohol will grow with the demand and circumstances of the particular community and geographical location. Local communities are in the best position to assess whether the number of liquor-licensed restaurants for a particular neighborhood or geographical locale is adequate for that community’s needs.

**2: How should LCB determine that the number of SBW restaurant licenses is adequate for the needs of the community?** This determination is best made by local government. The current liquor licensing process should be modified to facilitate this determination by local communities. Such determination should take into consideration the specific needs and circumstances of the community and whether granting (or denying) a proposed liquor license will benefit or negatively impact that community. This determination is best made when the local government has sufficient information about the proposed liquor-licensed establishment before the liquor license is issued.

**3: What is the formula or objective criteria for making this determination?** The current approach of a statewide license-to-population ratio is not effective. The workgroup has not found an alternative formulaic approach that would be an effective tool in determining how many liquor-licensed establishments is adequate to meet the needs of a particular community. Rather, the relevant factors important to the assessment should be provided to help local government make this determination.

### **III. WORKGROUP RECOMMENDATIONS**

#### **A. MODIFY THE LIQUOR LICENSING PROCESS FOR ENHANCED LOCAL REVIEW**

##### **Short-term recommendations**

###### **1. Enhanced Review of SBW Restaurant License Applicants**

LCB licensing staff will obtain more information from the applicant about their business operations at the initial review stage. This information will be provided to the local authority when LCB sends notification to the local authority about the liquor license application. With the additional information, the local authority can make a better informed decision on whether to object to the issuance of the liquor license.

The changes to the current liquor licensing process are:

- More questions will be asked of the applicant by the LCB licensing investigator during the telephonic interview.
- The local authority notification will be delayed until after this interview is conducted.
- The local authority notification will contain the information obtained in the interview.

These changes can go into effect in December 2006.

##### **Long-term recommendations**

###### **1. Create and implement electronic transmission of the Local Authority Notice**

- Results in the local authority having more time to consider their response on a given application.

###### **2. Create and implement information sharing agreements with those local authorities who request it.**

- Makes it easier for the local authority to obtain more detailed information from LCB regarding a given application.

Work groups will need to be created to formulate and implement the processes necessary. Target date for completion is June 30, 2007.

###### **B. Better define what constitutes “adequately served”**

**Community Impact Determination - Benefit and Variables.** Define “adequately served” with factors and considerations pertinent to the assessment determination by LCB and local government. Such factors should include the following risk and benefit variables.

<b>Risk Variables</b>	<b>Benefit (Convenience) Variables</b>
<ul style="list-style-type: none"> <li>• Law enforcement calls for service</li> <li>• LCB AVN history for area</li> <li>• DUI history in area</li> <li>• Ratio (all police calls for service / alcohol-related service calls)</li> <li>• Possible increase in level of law enforcement capacity</li> <li>• Health indicators (alcoholism rates, homelessness, other)</li> <li>• Youth demographics in immediate area, ie. “x” percentage of population in immediate vicinity under 21</li> <li>• Business operation variables: High percentage of alcohol to non-alcohol sales, late night (open after 11 pm, high percentage of untrained staff, facility size, lack of adequate security, lighting, size of facility, occupancy load, food/alcohol ratio)</li> <li>• Business “churn” (turnover) in area</li> <li>• Mix of other liquor licensed businesses in area (taverns, BW restaurants, SBW restaurants &amp; other retail outlets)</li> <li>• Distance proximity to other liquor establishments</li> <li>• Impacts to residential livability (e.g. noise, litter)</li> <li>• Operator risk indicators (e.g., delinquent tax payments, bankruptcy)</li> </ul>	<ul style="list-style-type: none"> <li>• Net employment gain (especially of local residents)</li> <li>• Various business taxes</li> <li>• Enhances and/or increases the public utilization of space</li> <li>• Contribution to the long-term economic development goals of the community</li> <li>• Positive (cultural) entertainment</li> <li>• Tourist traffic</li> </ul>

Incorporate these factors into WAC provisions. Specifically, amend Chapter 314-09 WAC to list the factors (in general terms) relevant to the assessment of negative impacts and benefits to the community.

### **C. Enhanced Enforcement Review at License Renewal for Problem Licensees**

Add criminal history record background checks to problem liquor licensed-establishments at renewal time. Develop guidelines for LCB enforcement staff to assess the public safety risk of nightclub-type establishments and other problem licensees for inclusion in non-renewal request.

### **Other steps to improve density issues**

#### **Long-term recommendations**

##### **A. CREATE A NEW NIGHTCLUB LIQUOR LICENSE**

Nightclub-type establishments have the greatest impact to local communities. There is no specific liquor license for this type of business. Under the existing liquor licensing system, these establishments can sell alcohol if they obtain the SBW restaurant liquor license. The current licensing process does not provide the opportunity for local government and communities to know which applicant will be operating a nightclub-type establishment. Consequently, local authorities do not have sufficient information to conduct a meaningful review and make a well-informed assessment on whether to object to the issuance of the liquor license for the particular locale.

Local jurisdictions, especially the city of Seattle, believe the creation of a nightclub liquor license will greatly improve LCB and local law enforcement's ability to control the number of nightclub-type establishments and minimize the negative impacts of their operations. The Density workgroup shares this belief and recommends that a legislative proposal be submitted to the 2007 Legislature.

Recognizing that the creation of a new liquor license and that more careful thought and stakeholder discussion on the definition of a "nightclub" and enforcement and implementation strategies need to occur, it is recommended that the effective date be July 2008 for the nightclub license. Specifically, important elements of a nightclub proposal that should be addressed are:

- (a) Food service requirements
- (b) Minors access to the premises
- (c) Operating plan requirement for nightclub-type establishments so that specific terms or conditions can be clearly, expressly set out in the operating plan to minimize and reduce nuisance and public safety concerns. (Ex: Mandatory security standards or certification for personnel hired / used at nightclubs.)

## **B. ESTABLISH CRITERIA FOR “ADEQUATELY SERVED”**

Adopt through rule-making those factors and considerations that determine whether a local community is adequately served as part of the process to grant or deny a liquor license application or renewal.

## **C. Remove Statewide Cap for SBW Restaurant Licenses.**

The current statewide limit of 1 SBW restaurant license per 1450 people is not an effective tool for LCB and local government to determine whether a particular community is adequately served by existing liquor-licensed establishments that sell spirits, beer and wine by the drink. The statewide cap does not take into consideration the specific needs and circumstances of communities that have many or few SBW restaurant licenses. The numeric formula does not reflect the benefits or negative impacts to a particular community. Thus, it is an arbitrary standard which does not address problems arising from certain license types and the needs of a particular locale. Continuing to use statewide cap would penalize businesses and local communities where the addition of a SBW restaurant license would be an economic benefit.

With the changes recommended above, LCB in partnership with local authorities will have better tools to assess and manage the number of these licensees to meet the particular local community needs.

**IV. GENERAL RECOMMENDATION:** The workgroup recommends that LCB proceed with implementing these recommendations.