

RAISING THE BAR

Reforming the City of Atlanta's alcohol licensing and permitting process
through education, accountability and objectivity
The report of the Citizens' Advocate, Sept. 2011

AT ISSUE

In June 2010, Christa Scott left the Midtown club where she worked as a waitress and got behind the wheel of her car with a blood alcohol level nearly three times the legal limit. Moments later, her car collided with that of 24 year-old Jordan Griner. Griner was killed.

Griner was an intern in Georgia Gov. Sonny Perdue's office. According to the Atlanta Journal-Constitution (June 21, 2010), "the young man's father, Toni Griner, reacted angrily to news that Scott had driven away from a nightclub while intoxicated."

The City of Atlanta's alcohol ordinance and permitting process provide fewer safeguards against such tragedies than is the case in neighboring jurisdictions. Atlanta doesn't require alcohol license applicants to prove they are familiar with the law, nor does the city require employees like Scott to have an alcohol pouring or serving permit.

The same year that Jordan Griner was killed, 2010, the City of Atlanta processed 566 applications for alcohol licenses, according to figures provided by the Atlanta Police Department, an increase of 62 percent over the previous year's 354. In 2010, Atlanta increased its beer and wine license fees dramatically, bringing them more in line with liquor license fees, which made it more feasible for vendors to apply for a liquor license. As Atlanta seeks to rebound from a poor economy, it is likely that more venues will seek to sell alcohol or upgrade from beer and wine licenses to liquor licenses, requiring more police enforcement—unless the city takes steps now to encourage greater compliance and accountability on the part of its store proprietors, bar and restaurant owners and managers, and their employees.

Atlanta's citizens and city government officials generally agree that the privilege of selling alcohol is one that comes with considerable responsibility; alcohol, after all, contributes to traffic accidents, violent crime, dependency, birth defects, illicit sexual activity and unemployment, all ills with which the City of Atlanta is woefully familiar. Yet, the city's alcohol sales license is given easily with little concern for even the most basic knowledge of the law on the part of the applicant. Because no standard of proof is ever applied to the applicant's knowledge of the city ordinance governing alcohol sales—aside from the License Review Board's informal question, "Have you read our ordinance and are you familiar with it?," the city is essentially granting a license and hoping the applicant abides by the law without any evidence to support such hope.

The process does not provide an adequate filter to deter unscrupulous vendors. It also deeply frustrates the neighborhoods in which the licensees locate, because the mere existence of a licensing process leads the citizens to believe that there is some screening mechanism applied, that gaining a license is a privilege granted after the applicant clears some hurdles. However, when they see the process up close—usually when their own neighborhoods are where an applicant seeks to sell alcohol—they are disappointed by the lack of professionalism, standards, or any meaningful connection between the alleged "privilege" of selling alcohol and the likelihood of the vendor's compliance with the law.

THE PRESENT PROCESS

At present, the City of Atlanta's alcohol licensing process consists of the following steps:

1—The applicant completes a 14-page application which includes

- the type of license for which the applicant is applying
- the address of the establishment where he or she will be selling alcohol
- the zoning of the area where the establishment is located
- which neighborhood planning unit (NPU) the establishment is in or will be in
- the City Council district where the establishment is
- Whether the establishment meets the distance requirements to schools, churches and other establishments specified by state law or city ordinance.
- Detailed background information about the applicant including work history, residential history, criminal background (including court certifications), copy of lease or deed, financial documentation to evidence the source of investment, bank account information, letters of reference from three (3) people and signed acknowledgement of the law by the property owner.

2—The Atlanta Police Dept's license and permit unit reviews the application for omissions, returns it to the applicant for completion, if necessary, and conducts a background check of the applicant through the Georgia Crime Information Center. They also review the source of the applicant's funding, the validity of the lease/deed and references.

3— The NPU where the business is, or will be, located is allowed to review the application and vote on whether the license should be granted. The NPU vote is considered a "recommendation"—the city's License Review Board and the mayor may take the NPU vote into account, but the vote does not determine the city's course of action.

4--The city's Bureau of Buildings, fire department, and the county health department inspect the premises of the establishment for which the license is sought. Without the approval of these departments, the license is not granted.

5-- The applicant runs an advertisement in the newspaper of legal notice (typically the Atlanta Journal Constitution or the Fulton County Daily Report) notifying the community of his or her intention to sell alcohol at the specified location. This ad costs between \$1,600 and \$2,000. A "publisher's affidavit" is provided by the publication to the applicant to then show the APD.

6--The License Review Board, a body made up of seven members appointed by the City Council and the mayor, votes on whether to recommend that the mayor grant or deny a permit/license to the applicant. When the LRB meets to review applications, the board members have an opportunity to ask questions of the applicants. One of the questions asked in every instance is "Have you read our ordinance and are you familiar with it?"

7—Once the LRB has voted to forward an application to the mayor with a recommendation to approve or deny a license or permit, the mayor decides whether to grant the license/permit. The mayor's decision may or may not reflect the recommendation of the LRB.

Clarification of the Role of the License Review Board

Though the License Review Board (LRB) is often referred to as a purely advisory body with only the power to recommend to the mayor approval or denial of a license, this is not the case.

The city code makes it clear that, in fact, the mayor himself defers to the LRB because, if the mayor does not act to approve or deny a license within 60 days of the LRB's recommendation, the recommendation of the LRB stands as the final decision on the license.

The city ordinance governing the licensing process reads as follows:

Sec. 10-66. - Public hearing on application; approval by mayor.

(b)

" ... If the mayor does not make a decision to grant or deny an application within the 60 calendar days provided, and does not choose to remand the application to the license review board, the application shall be approved or denied wherein the recommendation of the license review board shall become the final decision of the mayor."

Testing for Knowledge of the Law to Ensure Compliance

Some municipalities require that applicants for alcohol licenses take a test in order to prove that they are familiar with the law, rather than simply answering the question “Have you read our ordinance and are you familiar with it?”

The goal is compliance. Business owners and employees are far more likely to comply with the law if they are familiar with it. A test sets a standard, ensuring a more law-abiding class of business owner and employee, raising the bar, so to speak, for the quality of business that Atlanta accepts.

Here are some examples of what other governments require of alcohol license applicants, as compiled by Sard & Leff Attorneys:

- The City of Roswell, Ga. requires alcohol license applicants to complete a 12-question, “open-book” examination. The “open-book” is a copy of the ordinance.
- The Oregon Control Commission requires applicants to take an open-book law orientation self-test. Depending on the license type, the self-test consists of 50 to 75 multiple choice questions.
- Montgomery County, Maryland requires that applicants for an alcohol license sort identification—drivers’ licenses and student IDs—into stacks of “valid” and “invalid” at a public hearing.
- The state of Hawaii requires applicants to correctly answer 12 questions, such as “Using today’s date, you may legally sell liquor to a person born on July 5, 1990. True or False?” and “A liquor license must be conspicuously posted. True or False?” and “A customer 17 years or younger may assist an adult friend by carrying the adult’s liquor from the store to the car. True or False?” (See Appendix.)

These tests provide a mechanism for gauging the likelihood of compliance with the law. The results tell the administering government whether the applicant knows what he can and can’t do on the premises of his establishment. By using an exam as the gate for the entire alcohol licensing process, the city decreases the likelihood of crime on the front end rather than trying to abate it on the back-end—the latter being a more expensive approach given the use of police resources and the burden on the courts.

Pouring and Handling Licenses Ensure Every Employee is Accountable

Neighboring metro-area governments require that servers and cashiers who handle alcoholic beverages have what is called a “pouring” or “handling” license. The idea, as expressed by staff in Cobb County’s licensing office, is to make sure that even front-line staff know what is legal and what is not and to hold them accountable for illegal activity of which their employer may not be aware. (Employees who do not handle alcohol, such as busboys, cooks and dishwashers are not required to have a pouring license.)

Some governments, such as that of Sandy Springs, Ga., require that the pouring/handling permit holder complete some formal training within six months of getting his or her permit. The training teaches employees about real-life situations in an alcohol vending environment and how to handle them. Some offer TIPs (Training Intervention Procedures) at their own government facilities on certain days of the week. Once a permit holder has received TIPs training and a certificate of completion from the police department, he or she does not have to repeat the training for permit renewal.

For those who prefer a different program, there are several alternatives to TIPs available, including

- Bar Code – Serving Alcohol Responsibly
Contact: Patricia Mellody
(800)-765-2133 x388
- The Training Institute for Responsible Vendors
Contact: Scott Wiatic
404-531-9237
- Evindi, Inc. (formerly “It’s the Law”)
Contact: Michelle Stumpe
770-988-9970
- ServSafe, developed by the National Restaurant Association (www.servsafe.com)

What if a bartender, server or cashier breaks the law?

In the event that the holder of a pouring or handling license fails to comply with the law, most of these governments revoke the permit for at least a year, a practice that bars irresponsible wait staff and cashiers from participating in the industry.

COSTS AND FEES

Some governments charge a fee for the permit itself plus a separate fee for fingerprinting or background checks, both of which are required in order to hold a pouring permit.

- The City of Alpharetta charges a \$50 fee for a pouring license, and a \$40 annual renewal fee. The reason the renewal fee is pricier than that of some other cities', according to Spokesman Chuck Hunt, is that Alpharetta requires fingerprinting for renewals, whereas most cities require fingerprinting only for the initial license. He says doing prints annually prevents an unqualified applicant from posing as someone else.
- The City of Roswell charges a \$25 annual fee.
- The City of Decatur charges a \$55 fee for its pouring license which may be renewed annually by paying a \$10 fee. All servers and bartenders at bars and restaurants must have a pouring/handling permit and all cashiers at stores that sell alcohol (including grocery stores) must have a permit.
- The City of Dunwoody charges a \$60 permit fee plus a \$50 background check fee. Only managers and supervisors at bars and restaurants are required to have pouring permits.
- Cobb County charges \$35 for a pouring license for individuals who handle alcohol at an establishment that serves alcohol or at a store that sells it. The license is renewable on an annual basis.
- DeKalb County charges a \$35 annual fee. All servers at bars and restaurants are required to have a pouring permit. Cashiers at package stores (but not grocery stores) are required to have them, as well.
- Gwinnett County charges a \$50 annual fee (as of 10/01/2011). All servers and bartenders at bars and restaurants are required to have pouring permits.

A BETTER PROCESS: WHAT WOULD IT LOOK LIKE?

Once reformed, the process would include the following steps:

1. All applicants, including business owners and employees, take city alcohol license test.
2. The applicant is notified via mail whether he has passed or failed the test. (It may be that results are available immediately, depending on how the test is administered.)
3. If the applicant passes the test, he is advised to present his letter of exam passage to the city' licenses and permits unit in order to obtain an application. If he fails the exam, he is encouraged to take it again after 90 days from the date the letter was mailed by the city or testing company. No application for a permit will be provided to an applicant unless he passes the test.
4. Once in receipt of the applicant's letter of exam passage, the Atlanta Police Department provides the applicant with either an individual pouring and handling permit application or, in the case of would-be business proprietors, its current 14-page application. Neither application will be provided to individuals who have failed the city's licensing test.
5. In order to obtain the transfer of a license, the applicant, also known as the person to whom the license will be transferred, must complete and pass the exam as well as a background check. The person to whom the license is to be transferred will not be provided an application unless he has passed the alcohol licensing test and the police department's background check.
6. When the applicant has completed the application, the Atlanta Police Department's license and permit unit conducts a background check of the applicant through the Georgia Crime Information Center.
7. The NPU where the business is, or will be, located is allowed to review the business owner applicant's test results and application. The NPU members may ask an applicant for correct answers to any test questions he answered incorrectly. The NPU then votes on whether the license should be granted. The NPU vote is taken as a recommendation to the License Review Board.
8. The city's Bureau of Buildings, fire department, and the county health department inspect the premises of the establishment for which the license is sought.

9. The city notifies the community of the establishment's application on the city website rather than requiring applicants to advertise in local legal organs. This saves the applicant money and provides a central, easily accessible repository for citizens to use to find out who is applying for a license and for what location.
10. The License Review Board reviews the business owner applicant's test answers and results as well as the establishment's application and votes to recommend approval or denial of the license.
11. The mayor approves or denies the license within 60 days of the LRB vote or the recommendation of the LRB stands as the city's final decision (see page 4 of this report).

RECOMMENDATIONS

The Citizens' Advocate recommends that the City of Atlanta introduce education, accountability and objectivity into its alcohol licensing process by codifying and implementing the following:

1. **EDUCATION. Require testing to ensure that applicants and their employees know the law. This should be the very first step in applying for a city alcohol license of any kind.**
 - The test may be written by a committee or board appointed by the mayor, city council, neighborhoods and merchants.
 - The test may be administered by any reputable testing company that meets the city's contracting requirements.
 - The test should be graded electronically in order to ensure fairness and accountability.

2. **ACCOUNTABILITY. Require pouring and handling licenses for all employees who sell or handle alcohol.**
 - The pouring/handling permit could only be obtained by passing the test described above.
 - The permit would cost the employee a reasonable amount to cover fingerprinting and background checks, with a lesser fee required for renewal.
 - The city would save administrative costs by making the permit active for up to three years.

3. **OBJECTIVITY. Investigators should do investigations rather than paperwork.**
 - By putting a test in place as the gatekeeper to getting a permit, police are able to allocate their resources to investigating reports of wrongdoing by an alcohol vendor rather than spending their time on paperwork.
 - By making the Office of Revenue the grantor of the permit, the city diminishes the police department's paperwork burden.

SUMMARY

The ultimate goal of the city's alcohol permitting process should be compliance with the law. Law abiding bar, restaurant or store owners tend to have better relationships with their neighborhoods, they cost the city less money in enforcement efforts or court proceedings, and attract a more law-abiding clientele.

An applicant who knows the law is more likely to comply with it. Employees who are required to know the law in order to maintain their own pouring or handling permits are more likely to keep the establishment compliant and avoid dangerous behavior like drinking on the job.

Atlanta likes to think of itself as a world class city, but to truly achieve that we have to take the mature view that alcohol is a substance that can't be handled carelessly. A grown-up city has a grown-process in place for bestowing the privilege of alcohol sales, a process that prevents crime, preserves the quality of life, and maybe even saves lives.

Stephanie Ramage
Citizens' Advocate
Office of the Mayor
City of Atlanta
Sept. 30, 2011

APPENDIX I

SAMPLE: HAWAII'S TEST

Rule 2.9 of the Rules and Regulations of the Kauai Liquor Control Commission states: "No license shall be issued or renewed until the commission is satisfied that the applicant is familiar with the liquor laws of Hawaii and with the rules and regulations of the commission." Therefore, this questionnaire must be answered correctly and returned to the commission by June 15, 2011, before your renewal application can be processed. Department's fax: 241-6585.

OFF PREMISES LICENSEES

Fill in all blanks with the proper answer.

1. Using today's date, you may legally sell liquor to a person born on July 5, 1990. _____ (True or False)
2. Customers are permitted to consume liquor on the store's property, provided consumption takes place outside of the store. _____ (True or False)
3. A licensee is required to have a copy of the Commission's Rules and State Liquor Laws on the premises at all times. _____ (True or False)
4. The liquor license must be conspicuously posted. _____ (True or False)
5. Liquor may legally be sold from: _____ a.m. to _____ p.m.
6. A customer may be sold liquor after 11:00 p.m., if the customer stood in line before 11:00 p.m. to purchase the liquor. _____ (True or False)
7. If an employee, while on duty, violates any liquor law or commission rule, the licensee may be fined up to \$2000 or have his license suspended or revoked. _____ (True or False)
8. A customer 17 years or younger may assist an adult friend by carrying the adult's liquor from the store to the car. _____ (True or False)
9. The minimum age to sell liquor is 21 years old. _____ (True or False)
10. A Retail Dealer licensee may purchase liquor from another Retail Dealer licensee for resale. _____ (True or False)
11. Compliance checks involve a minor 18 to 20 years of age who is sent into the store by the department to see if the store's employee sells liquor to the minor. _____ (True or False)
12. It is permissible to offer free merchandise with the purchase of a bottle of wine. _____ (True or False)

FIRM NAME: _____ LIQUOR LICENSE NO.: _____

NAME OF PERSON COMPLETING
THIS QUESTIONNAIRE: _____

TITLE: _____ DATE: _____
(Print)

PHONE NO.: _____ FAX NO.: _____

E-MAIL: _____

(2011 - 2012)