Legalities of an Alcohol Beverage License

Condemnations involving businesses that sell alcoholic beverages

BY MICHAEL F. YOSHIBA, ESQ.

A few years ago, a redevelopment project by the City of La Mirada, California sought to acquire an antiquated retail strip center for development and construction of affordable housing. The strip center had a typical California mix of tenants that included a fast food restaurant selling Baja-style fish tacos, storefront churches, an acupuncture clinic, an indoor softball training facility and a neighborhood beer/wine bar called the Anchor Inn.

The Anchor Inn was outfitted with an assortment of unmatched tables and chairs, a record playing jukebox, a cigarette machine, unflattering lighting and a bar area with wobbly red vinyl stools stretching across the back of the room. Behind the bar were neon lighted beer signs, the usual collection of glassware, stacked snack bowls and beer tap handles. But above all these details, the most memorable thing about the Anchor Inn were all the difficulties the transaction eventually presented. Though there were many legal challenges in acquiring the property rights to this retail strip center, none were more challenging than trying to secure property rights from the Anchor.

Challenges for the Acquiring Agency

The Anchor Inn had been in this location for more than 10 years, with several more years remaining on their lease when the City approached the business owners about purchasing their property. Business at the Anchor Inn was not brisk, but it attracted enough patronage and produced sufficient revenue to allow the owner-operator-bartender to cover monthly expenses and market-rate adjusted rent. Six months was initially allotted for negotiations toward an agreement followed by displacement and relocation. But upon further investigation, the legal complexities surrounding this proposed acquisition became readily apparent, and six months was not enough.

In California, the manufacturing, distribution, storage and sale of alcoholic beverages is regulated through laws enforced by the Department of Alcoholic Beverage Control (ABC). The alcoholic beverage license in the Anchor Inn location was not automatically transferrable to another location. Changing locations was subject to the local municipal codes and ABC regulations. In this instance, the Anchor Inn was conditionally permitted to operate at the existing location, but any subsequent move of the business required a new conditional use permit.

After an exhaustive search for a replacement site in the City was unsuccessful, the only option was a move to surrounding cities. Anchor Inn's owner had considered at least a half-dozen new locations but could not find any that were convenient and readily accessible to his existing customer base. And all of the proposed locations already had existing alcoholic beverage licenses, thus his current license would be unnecessary.

And if the Anchor Inn owner were to opt for a purchase of another existing bar with an alcoholic beverage license, he would have to apply to the ABC for a license transfer. The transfer application review would take a minimum of 30 to 120 days before the ABC would decide if it was approved or denied. If denied, the appeal process could take up to a year, not even considering the expense of pursuing this option. Finally, the costs associated with purchasing another business and location was uncertain. What was certain, however, was that the Anchor Inn was unable to relocate the business or purchase another similar business within the six-month acquisition timeline allocated for the project.

Complicating this situation was the fact that the business showed no profitability and was thus found to have no business goodwill. (California is one of a handful of states that compensates displaced businesses for loss of business goodwill.) In sum, the business had a market-based rental rate (so no bonus value of leasehold), fixtures and equipment that were fully depreciated and nearly obsolete, an unsold alcoholic beverage inventory, a worthless ABC license, no business goodwill, and relatively few options to relocate because of the ABC rules, regulations and associated delays in obtaining permission to transfer or relocate the business.

A Viable Solution

Nonetheless, the City worked with the Anchor Inn owner to craft a mutually acceptable solution. The Anchor Inn owner decided that the difficulties in trying to move the business or buy an existing business were neither feasible nor desirable. The business owner was contemplating retirement within a few years anyway. The parties reached an all-inclusive monetary settlement agreement, and the Anchor Inn's alcoholic beverage license was voluntarily surrendered back to the ABC, who would later issue that surrendered permit to a new applicant via its lottery system. Affordable homes now occupy the location of the former Anchor Inn and serve as a successful result that began and ended with ABC.✪

Michael Yoshiba is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.