



City Council Staff Report

Subject: Business License Vesting
Author: Beth Bynan, Business License Specialist
Hannah Tyler, Planner
Bruce Erikson, Planning Director
Jonathan Weidenhamer, Economic Development Manager
Rebecca Gillis, Finance Manager
Michelle Downard, Deputy Chief Building Official
Department: Finance
Date: September 14, 2017
Type of Item: Work Session

Summary Recommendation

Staff recommends City Council review the listed options and provide guidance on possible ways to create a pipeline for business license vesting within the Main Street BID in order to establish priority for chain businesses (CCB).

Staff would like to call Council's attention to the fact this is a work session item. Usually work session items are presented to Council prior to 6pm. Due to time constraints on the agenda, staff is presenting this item during the Old Business part of the regular agenda, which is scheduled to take place after 6pm. While staff anticipates receiving direction from Council on this item, this item is not scheduled for a vote.

Executive Summary

Staff is seeking Council direction on possible options to allow for business license vesting within the Main Street Business Improvement District (BID) which includes a portion of the Historic Recreation Commercial (HRC) and Historic Commercial Business (HCB) Districts. The four possible options staff will present to Council are:

1. **Pipeline:** If the proposed business location is within the BID (Exhibit A), then the applicant may apply for a business license prior to receiving a business license pre-inspection.
2. **Pool:** If designated a CCB by the Planning Director, the applicant would be placed into a pool of potential CCBs that is interested in commercial space within the BID area. A CCB applicant would go through a staff approval process and be assessed a *readiness profile* and be placed into a pool of potential CCBs that is interested in commercial space within the BID area.
3. **Hierarchical list:** If designated a CCB by the Planning Director, the applicant would be placed on a hierarchal list of potential CCBs that is interested in commercial space within the BID. A CCB applicant would go through a staff approval process and be assessed a *readiness profile*. When a CCB vacancy occurs, a landlord of a potential location would refer to the hierarchal list for the next available CCB. The "next" CCB will have right of first refusal.

4. Allow a “tail” to remain in place, so that if a CCB vacates a space the landlord would have a predetermined number of days to fill the space with another CCB.
5. Null alternative: Maintain status-quo.

Additionally:

- a. Staff **does not** recommend an exception for any Convention Sales Licenses (CSL) type business; more specifically staff recommends that all business licenses, even ones during the Sundance Film Festival or Kimball Arts Festival adhere to the Conventional Chain Ordinance in place year-round and be held to the same standards as other CCBs within the BID boundaries. Businesses under the Sundance Film Festival Level III Special Event license would not be subject to the Conventional Chain Ordinance.
 - a. Staff reviewed the previous two years of Type 2 CSL (Sundance) and found that only 5-8% would be considered a CCB. If the maximum number of CCBs met, a CSL CCB applicant would need to license a premise outside of the CCB regulated area (i.e. Summit Watch Plaza, Gateway Center, Kearns, Prospector, etc.).
- b. Staff **does** recommend that if *ownership* of a currently permitted CCB changes but the location, CCB and signage does not change, then the new owners will have thirty (30) days from the date of execution of lease to apply for a new business license without having to be placed back into the pool of CCBs waiting for a spot to become available.
- c. Staff **does not** recommend creation of any “tail” that would allow building owners with approved CCB tenants have the ability to replace them ahead of any pipeline or waiting list.

Acronyms

BID	Main Street Business Improvement District
CCB	Conventional Chain Business
City	Park City Municipal Corporation
CSL	Convention Sales License
HCB	Historic Commercial Business District
HRC	Historic Recreation Commercial District
Type 1	CSL available throughout the year except during Sundance
Type 2	CSL available during Sundance
Type 3	CSL available in a licensed convention space

The Problem

On August 17, 2017 City Council, in addition to approving an ordinance to limit the future number of CCB's on Main Street, enacted an Ordinance to amend Municipal Codes 4-2-4 and 4-2-8 to remove the exception by the Building Official to allow application for a business license prior to a pre-inspection.

City Council asked staff to come back with recommendations for a process or specific conditions in which an applicant could apply for a business license prior to a pre-

inspection, specifically in the HCB and HRC that are subject to the Conventional Chain Business (CCB) regulation. Council also asked staff to create a “tail” that would allow building owners that have approved CCB tenants have the ability to replace them ahead of any pipeline or waiting list. [Staff Report](#), pg. 174 – Draft Minutes can be found in this meeting packet.

Background

On December 8, 2016, staff presented a Work Session regarding the Main Street Storefront Enhancement Program Land Use Controls to City Council. City Council gave staff direction to complete the following:

1. Amend the Land Management Code (LMC) to limit the allowable storefront width to fifty-feet (50’) on the Main Street façade and the Heber Avenue façade of any single business location on Main Street in the Historic Recreation Commercial (HRC) and the Historic Commercial Business (HCB) Districts (*approved by City Council on April 27, 2017*)
2. Update the Design Guidelines for Historic Districts and Historic Sites to address Corporate Architecture (*in process with the Historic Preservation Board*)

On May 11, 2017, the Planning and Economic Development Departments conducted a Work Session with City Council to address potential Land Use controls related to CCBs. City Council gave staff direction to pursue a cap on CCBs in the HCB. On August 17, 2017, City Council approved an Ordinance addressing the CCB cap in the HRC and HCB. City Council also approved amendments to Municipal Codes 4-2-4 and 4-2-8 to remove the exception by the Building Official to allow application for a business license prior to a pre-inspection.

At the August 17, 2017 City Council meeting, Council asked staff to come back with recommendations for a process or specific conditions in which an applicant could apply for a business license prior to a pre-inspection, specifically in the HCB and HRC that are subject to the Conventional Chain Business (CCB) regulation. Council also asked staff to create a “tail” that would allow building owners that have approved CCB tenants have the ability to replace them ahead of any pipeline or waiting list.

Below is a chronological list of all Public Meetings regarding the Storefront Enhancement Program and CCBs:

1. December 8, 2016 City Council - Work Session ([Staff Report](#), pg. 13 – [Minutes](#), pg. 3)
2. February 22, 2017 Planning Commission - Regular Agenda ([Staff Report](#), pg. 93 – [Minutes](#), pg. 7)
3. March 16, 2017 City Council - New Business([Staff Report](#), pg. 155 – [Minutes](#), pg. 12)
4. April 13, 2017 City Council - Old Business ([Staff Report](#), pg. 127 – [Minutes](#), pg. 8)
5. April 27, 2017 City Council - Old Business ([Staff Report](#), pg. 102 – [Minutes](#), pg. 7)

6. May 11, 2017 City Council – Work Session ([Staff Report](#), pg. 47 – [Minutes](#), pg. 8)
7. July 26, 2017 – Planning Commission – Regular Agenda ([Staff Report](#), pg. 187 – [Minutes](#), pg. 37)
8. August 17, 2017 – City Council – Regular Agenda ([Staff Report](#), pg.)

Based on the City Council feedback regarding vesting and “tail” staff met internally to brainstorm possible options. The internal staff team included the Finance, Building, Planning, Economic Development, and Legal Departments. Staff feels it is important to gather input from the City Council prior to meeting with the HPCA and/or other stakeholders. Staff has researched other Business License processes from other municipalities and can continue research after City Council gives direction on a specific vesting option.

Analysis & Directions for City Council to Consider

1. Allow an exception to accept an application without a pre-inspection if an applicant’s location is located within the BID - Should Park City allow an applicant within the BID to apply for a business license prior to a pre-inspection? **Staff recommends this option.**

The applicant would only be eligible for the exception to the pre-inspection requirement if there is construction (new or improvements). If no building permitting approvals are necessary, an applicant is immediately eligible for a pre-inspection, and therefore consideration of a business license.

The applicant could apply without an inspection, pay an estimated fee, and be time-stamped in. The application would remain “pending” until all requirements for licensure have been satisfied.

The following are general criteria staff would use, as defined in the ordinance, to designate a business as a CCB and assess the applicant a readiness profile:

- a. Applicant must provide:
 - i. Formal Affirmation of Sufficient Interest from the landlord/building owner as well as the parent CCB to proceed;
- b. Upon construction completion of improvements, the applicant must obtain a Certificate of Occupancy or Letter of Completion and Business License Inspection within a predetermined number of days. The maximum quantity of days has not been determined yet.
- c. A copy of the Business License Inspection would go to Finance to re-calculate the fees based on the final square footage. Finance will issue a refund or collect additional fees and issue the license.

PROS:

- This provides more assurance to a potential lessee that a CCB business license is available prior to taking on the cost of new construction or tenant improvements.

- The applicant will be required to already have a location and proof that the owner/landlord consents.
- This should minimize the free market trying to commoditize either the space or the business license.
- It eliminates the need for administration of a list or pool and equity/inequity therein.
- This also attempts to keep the licensing process separate from the CCB regulation in the LMC, but allows for an exception if applying for a license with an address located within the BID, which is where the CCB ordinance is in effect.

CONS:

- Standing alone, this process would not create a waitlisted pool of CCB's that are "next in line" for an eligible license.
 - Does not allow building owner a guaranteed tail.
2. Create a pool of CCB's: Should Park City allow for a CCB applicant to be placed into a pool of approved CCBs that landlords/leasing agents could select from at their discretion? **Staff does not recommend this approach.**
- a. The applicant would need to provide certain readiness documentation, such as:
 - i. Traditional, detailed business application information such as type, size, entity number, owner information and location of business;
 - ii. Formal Affirmation of Sufficient Interest from the landlord/building owner as well as the parent CCB to proceed;
 - iii. Pay an estimated fee based on square footage. The applicant must be able to apply for a building permit within a predetermined number of days of being selected for a suitable location.
 - iv. The applicant must be able to obtain a Certificate of Occupancy, Letter of Completion and Business License Inspection within a predetermined number of days of being selected.
 - v. The applicant could remain in the pool for a predetermined number of days.

PROS:

- Allows for a pool of pre-screened applicants that could be selected at the building owner/landlord's discretion based on the best fit/use for the location seeking a CCB.
- May avoid vacancies and exaggerated build-out times.

CONS:

- Planning Department would need to maintain and administer the list and the list would be public.
- This process does not necessarily vest a location, but if a landlord/leasing agent knows that a current CCB is leaving their space they could have access to the list and begin negotiations for another CCB to replace their leaving tenant.

- This provides a more predictable market for building owners who have made real estate decisions based on estimated market revenue predictability.
3. Hierarchal List of CCBs: Should Park City allow for a CCB applicant to be placed on a hierarchical list of approved CCBs that landlords/leasing agents could select from?
- a. The applicant would need to provide certain readiness documentation, such as but not limited to:
 - i. Traditional, detailed business application information such as type, size, entity number, owner information and location of business;
 - ii. Formal Affirmation of Sufficient Interest from the landlord/building owner as well as the parent CCB to proceed;
 - iii. Pay an estimated fee based on square footage. The applicant must be able to apply for a building permit within a predetermined number of days of being selected for a suitable location.
 - iv. The applicant must be able to obtain a Certificate of Occupancy, Letter of Completion and Business License Inspection within a predetermined number of days of being selected.
 - v. The applicant could remain on the list for a predetermined number of days.

PROS:

- The first in line may only have first right of refusal when availability and a location are present.

CONS:

- This approach would likely lead to vesting of a location. If the next applicant on the list is not a match for the space it may become inequitable to allow the next in line to jump ahead. This may lead to vacancies on the street when the next in line is not a suitable fit, but the landlord/leasing agent is holding out for a CCB in their location.
4. Allow a “tail” to remain in place, so that if a CCB vacates a space the landlord would have a predetermined number of days to fill the space with another CCB. **Staff does not recommend this approach.**

PROS:

- Existing landlords of CCBs would benefit because they could continue to rent to future CCBs.

CONS:

- Existing landlords of non-CCBs would be at a disadvantage because they are dependent on a tail expiring in order to rent to a CCB in the future.

- Allowing a tail while waiting for the landlord to fill the space with another CCB could lead to vacant storefronts for undetermined periods of time.
- The location is vested, potentially leading to market distortion. This may create an unfair advantage to existing CCB landlords over other landlords who currently do not have a CCB tenant.
- The location of retail mix will be fixed in place until the landlord allows the tail to expire.

5. Maintain status-quo. The City would not change the current Business Licensing process and applicant must have a *passed* Business License inspection in order to apply. **Staff is looking for input from Council on this approach.**

PROS:

- Life safety standards are in place and kept a priority.
- Fees are in place and accurate.
- Maintain consistency with all license applications within City limits.

CONS:

- Licensing sequence is not favorable to applicants because they would have to invest in the space prior to having assurance that they will be issued a business license.

Staff recommends City Council review the listed options and give guidance on possible ways to create a pipeline for business license vesting within the Main Street BID and portions of the HRC/HCB.

Department Review

Finance, Planning, Economic Development, Building, Legal, Executive

Exhibits

Exhibit A: BID Map