MEMORANDUM

TO: Ad Hoc Committee on Liquor Control
FROM: Craig Howard, Senior Legislative Analyst, OLO
Leslie Rubin, Senior Legislative Analyst, OLO
Jastina J. Ferber, Legislative Analyst, Council Staff

SUBJECT: Resolution to Support Reforms to Improve the Department of Liquor Control Operations and Expand Choice for Consumers and Businesses

The Ad Hoc Committee on Liquor Control recommends that the Council adopt a resolution urging the Montgomery County Delegation, the Maryland General Assembly, and the Governor to amend State law to allow private businesses to sell wholesale "special order" beer and wine products in Montgomery County and allow Montgomery County to institute a wholesale distribution fee in the County. This resolution supports reforms to improve the Department of Liquor Control operations and expand choice for consumers and businesses.

Background

For many years, Councilmembers have received feedback from stakeholders in the County outlining dissatisfaction with certain aspects of DLC’s operations. The County Council established the Ad Hoc Committee on Liquor Control to conduct a thorough examination of the structure and operations of the Department of Liquor Control and determine appropriate changes to the structure of alcohol distribution in Montgomery County.

During the Committee’s deliberations, one of the most significant recurring issues brought to the Committee’s attention was persistent concern by retail licensees in the County (owners of restaurants and private beer and wine stores) with DLC’s current process for the sale and distribution of special order products – particularly special order beer and wine. Licensees described problems with DLC’s systems that impact their ability to obtain the alcoholic beverage products that they rely upon to run their businesses. It is the sense of the Committee that, to date, the DLC has not been able to effectively manage the special order system, therefore allowing the private wholesale distribution of special order beer and wine to County retail licensees will help alleviate licensees’ concerns and positively impact their businesses while having the least amount of impact on DLC employees and revenue generated by DLC. The Committee believes that this
change must be effectively revenue neutral with the implementation of a wholesale distribution fee or charge and the expansion of the County's retail liquor outlets and that private special order distribution should not proceed until necessary state legislation is enacted to generate those revenues. The Committee believes that this change will make Montgomery County more competitive in attracting high quality restaurants, entertainment venues, and beer and wine stores, which will improve quality of economic activity for County businesses.

The Ad Hoc Committee on Liquor Control recommends the Council approve a resolution to take the following action:

The Montgomery County Council requests that the Montgomery County Delegation, the General Assembly, and the Governor enact legislation allowing private licensed wholesalers to distribute "special order" beer and wine products in Montgomery County to retail alcoholic beverage license holders. The Council further requests that the Governor and Maryland General Assembly enact legislation allowing the Montgomery County Government to implement a wholesale alcoholic beverage distribution fee or charge in the County to replace the County's lost revenue from this change.

The Council requests the amendment of State law to implement the following changes to Montgomery County's alcohol distribution system:

1. The classification of special order items will be the final responsibility of the County Department of Liquor Control.

2. Allow private licensed Maryland wholesalers to sell and distribute special order beer and wine products to retail licensees in Montgomery County. DLC would also continue to sell and distribute special order beer and wine products for distributors that would prefer not to deliver directly to customers in the County. DLC would maintain control of the sales and distribution of all stock beer and wine products.

3. Establish the following process for DLC to classify items as stock or special order:

   a. At the time when State legislation goes into effect, all items classified by DLC as special order items would remain classified as special order unless the entity from which DLC purchases the item (either producer or wholesaler) agrees in writing, after a formal request from DLC, that the item should become a stock item or a sufficient volume is achieved which warrants reclassification as a stock item.

   b. As under current practice, producers or distributors would be required to list products for sale in Montgomery County with DLC. DLC should process requests to list items for sale expeditiously.
c. When a producer or wholesaler lists with DLC an item that is new to the national (or Maryland) market, DLC must determine at that time whether the item will be classified as stock or special order. Items that DLC classifies as special order would remain special order unless the entity registering the item agrees in writing, after a formal request from DLC, that the item should be a stock item or a sufficient volume is achieved which warrants reclassification as a stock item.

d. DLC can choose to reclassify a stock item as a special order item at any time. Once an item has been reclassified as special order, the item will remain special order unless the entity from which DLC purchases the item agrees in writing that the item should be a stock item or a sufficient volume is achieved which warrants reclassification as a stock item.

e. DLC should maintain a list of special order items for sale in the County and the name of the wholesalers from which licensees can purchase the items.

4. Allow the Montgomery County Government to establish a fee or charge on private wholesalers selling special order beer and wine to Montgomery County licensees — either through a direct fee or through establishment of a permit charge. The cost of the fee or charge should:

   a. Be based on the volume of alcohol sold by private distributors only to retail licensees in Montgomery County.
   b. Replace DLC estimated revenue lost by allowing the sale of special order beer and wines by private wholesalers.
   c. Be structured in a way that does not impact prices in other jurisdictions.
   d. Be set and charged by Montgomery County.

County Government representatives from the Executive and Legislative branches will consult with State legislators to draft appropriate legislation to institute a fee or charge.

A resolution is attached at ©1 for Council introduction.

Additional Background Information on the Work of the Ad Hoc Committee on Liquor Control

In December 2014, the County Council established the Ad Hoc Committee on Liquor Control to study issues related to the distribution and sale of alcoholic beverages by Montgomery County. The Committee was tasked to review alternative models and construct a recommendation that better aligns Montgomery County’s alcohol regulations and policies with its economic development, quality of life and public safety goals. The Committee is chaired by Hans Riemer and includes Council President George Leventhal, chair of the Council’s Health and Human Services Committee, and Marc Elrich, chair of the Council’s Public Safety Committee. It should
be noted that Councilmembers Sidney Katz and Roger Berliner attended and participated in some or all of the Committee's meetings.

Montgomery County's alcohol distribution system is a "control" model – the County Government Department of Liquor Control (DLC) controls the wholesale distribution of all alcoholic beverage products (with limited exceptions) and controls the retail sale of all packaged liquor products sold in the County. Montgomery County is the only control jurisdiction in the State of Maryland – all other Maryland counties are "license" jurisdictions – where private sector businesses manage wholesale and retail sales of beer, wine, and liquor. In the United States, 33 states are license jurisdictions and 17 states are control jurisdictions.

DLC earns a profit from the sale of alcoholic beverages to retail licensees in the County. Over the past five years, DLC has transferred, on average, $25.7 million to the County general fund annually from profits from the sale of alcoholic beverages.

As a basis for its analysis, the Committee reviewed Office of Legislative Oversight Report 2015-6 – Review of Alcohol Control in Montgomery County, an examination of the alcoholic beverage distribution system in the County. The OLO report described five options to change DLC's operations in the County – four options that would change the structure of alcohol distribution in Montgomery County and one option that recommended changes to the Department of Liquor Control's (DLC) practices within the current structure. OLO also outlined four alternative ways to generate revenue for the County Government from the sale of alcohol in the County.

The Committee held seven meetings in February, March, May and June 2015 and heard testimony from stakeholder groups, including DLC customers, restaurateurs, beer and wine store owners, Municipal and County Government Employees Organization (MCGEO) representatives, private wholesalers, public health experts, members of the Alcohol Beverage Advisory Board, and DLC and Executive Branch staff, including representatives of the Police and Health and Human Services Departments. The Committee studied the current system that controls liquor distribution to County-operated retail stores, to private beer and wine stores, and to restaurants and reviewed the history of temperance and the establishment of the DLC in the County. Committee members also received numerous letters, emails, and phone calls from County residents and other stakeholders and various materials provided by the DLC.

The topics and issues discussed at each of the seven Committee meetings are summarized below:

**February 27:** The Committee was briefed on OLO Report 2015-6. OLO staff reviewed the Maryland framework for the sale of alcoholic beverages; summarized research on alcohol control and social costs; detailed key DLC financial, product, and program data; and summarized feedback on DLC's performance and operations from informational interviews and a formal survey of County alcoholic beverage license holders. The Committee discussed the five options for changing Montgomery County's alcohol structure and the revenue alternatives presented in the report. Also at the February meeting, the Directors of Liquor Control and Finance discussed with the Committee the options presented in the OLO report.
March 6: The Committee received an update from Inspector General Edward Blansitt and Deputy Inspector General Mollie Habermeier on Preliminary Inquiry Memoranda issued on 12/23/14 and 1/12/15 by the IG. These IG Memoranda reviewed complaints or issues related to DLC's warehouse operations and licensing, regulation, and education functions. OLO provided additional information on estimating the potential value of "cross-border" alcohol sales based on Montgomery County consumption rates compared to neighboring jurisdictions. The Committee also held a discussion with DLC Director George Griffin and MCGEO President Gino Renne on DLC management and operations issues.

March 20: The Committee received testimony from Dr. Christopher Leinberger, Professor at GWU and a Fellow at the Brookings Institution on Alcohol Policy and Quality of Life. The Committee also held a broad discussion with several licensees, distributors and manufacturers on many aspects of DLC's operations and performance, including: customer service, delivery operations, special order products, DLC's recently implemented ordering system, pricing, product availability, and economic competitiveness.

March 27: The Committee was briefed on public health and safety issues at its March 27 meeting by Dr. David Jernigan, Director of the Center on Alcohol Marketing and Youth (CAMY) and an Associate Professor in the Department of Health, Behavior and Society at the Johns Hopkins Bloomberg School of Public Health. Dr. Ulder Tillman, Chief Health Officer, Public Health Services, Department of Health and Human Services, briefed the committee on the County role in public health and safety issues. Licensing and public health and safety issues were discussed with George Griffin, DLC Director, Kathie Durbin, Chief, Licensure, Regulation and Education (LRE), Lee Williams, Inspector, LRE, and Captain Michael Didone, Montgomery County Police Department, Alcohol Initiatives Section. The Committee also was briefed by Inspector General Edward Blansitt on his Final Report: DLC Warehouse Inventory Management. Following-up on the survey of licensees included in Report 2015-6, and as requested by the Committee, OLO staff presented the results of a second survey on DLC's operations and performance that was sent to 808 County alcoholic beverage license holders.

May 8: The DLC Director and staff from the Transform MCG Technology Modernization project (ERP) briefed the Committee on the implementation of DLC's new ordering and inventory system that launched February 1, 2015. Committee members discussed with Executive Branch staff many of the concerns, issues, and/or frustrations they heard from licensees and restaurateurs on the new ordering system.

June 12: Patricia Andersen, Librarian for the Montgomery County Historical Society, made a presentation about the history of "Temperance" and the DLC in Montgomery County. OLO staff presented their follow-up report to OLO Report 2015-6: Further Analysis of Option 4 -- Private Wholesale Distribution of Special Order Beer and Wine. This follow-up memorandum analyzed potential implementation methods and issues if the Council were to endorse implementing Option 4.
June 19: DLC presented its Action Plan to the Committee which includes plans for improvements in six major categories: customer service, warehouse operations, special orders, retail operations, delivery and fleet operations, and financial controls and general operations. DLC also provided information on wholesale pricing comparisons prepared by CountyStat.

At the same time the Committee was convening meetings, DLC developed an Improvement Action Plan. The Committee strongly recommends that the Executive Branch move forward immediately to implement these planned improvements for DLC’s systems and operations. One important aspect of this Action Plan that the Committee strongly endorses is a plan to expand the number of county-run retail outlets and improve the customer experience at all stores – to generate significant additional profits for the County.

The Committee received information summarizing a significant amount of feedback from retail licensees in Montgomery County who are dissatisfied with DLC’s process for distributing the category of products that DLC calls “special order” products – which are products not regularly carried as inventory in DLC’s warehouse, but instead are purchased by DLC in response to a specific order from a licensee, retail store, or customer at a retail store.

During the Committee’s deliberations, Committee members concluded that Option 4 from OLO Report 2015-6 – which would allow the wholesale distribution of special order beer and wine products in Montgomery County by private wholesalers – presents an opportunity to improve DLC operations and better serve restaurant and beer and wine store owners without disrupting DLC’s profits or County Government jobs. OLO’s report estimates that the County could lose up to $5-7 million in gross profit annually and up to 15 employee positions by implementing this change. OLO also estimates that these losses would be mitigated by expanding DLC’s retail operation and/or establishing a fee for private distributors. In the FY16 Budget, the Council supported the Executive’s proposal to open three new DLC retail stores, adding approximately 22 new positions. The County’s current stores generated an average of $795,000 in gross profit per store in FY13, so three new stores could be expected to generate at least an additional $2,385,000 annually. The Committee urged the Executive to develop a strategic plan for continuing to expand and modernize DLC’s retail operation.

The Committee also concluded that the County Government should establish a fee on the private wholesale distribution of alcoholic beverages in the County to replace all or a portion of DLC profits lost due to private wholesale distribution of special order beer and wine in the County.

The Committee supported this change because it simply shifts the sale and distribution of products already sold in the County from one wholesaler (DLC) to another (private wholesalers). Consequently, the change may not have a direct impact on the quantity of alcohol sold in Montgomery County – mitigating impacts on public health.

The Committee will hold a public hearing on July 21, 2015.

Attachment: Draft Resolution ©1
Resolution No.:  
Introduced:  
Adopted:  

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Ad Hoc Committee on Liquor Control

Subject: Resolution to Support Reforms to Improve the Department of Liquor Control Operations and Expand Choice for Consumers and Businesses

Background

1. In December 2014, the County Council established the Ad Hoc Committee on Liquor Control to study issues related to the distribution and sale of alcoholic beverages by Montgomery County. The Committee was tasked to review alternative models and construct a recommendation that better aligns Montgomery County’s alcohol regulations and policies with its economic development, quality of life and public safety goals. The Committee is chaired by Hans Riemer and includes Council President George Leventhal, chair of the Council’s Health and Human Services Committee, and Marc Elrich, chair of the Council’s Public Safety Committee.

2. Montgomery County’s alcohol distribution system is a “control” model – the County Government Department of Liquor Control (DLC) controls the wholesale distribution of all alcoholic beverage products (with limited exceptions) and controls the retail sale of all packaged liquor products sold in the County. Montgomery County is the only control jurisdiction in the State of Maryland – all other Maryland counties are “license” jurisdictions – where private sector businesses manage wholesale and retail sales of beer, wine, and liquor. In the United States, 33 states are license jurisdictions and 17 states are control jurisdictions.

3. DLC earns a profit from the sale of alcoholic beverages to retail licensees in the County. Over the past five years, DLC has transferred, on average, $25.7 million to the County general fund annually from profits from the sale of alcoholic beverages.

4. As a basis for its analysis, the Committee reviewed Office of Legislative Oversight Report No. 2015-6 – Review of Alcohol Control in Montgomery County, an examination of the alcoholic beverage distribution system in the County. The OLO report described five options to change DLC’s operations in the County – four options that would change the structure of alcohol distribution in Montgomery County and one option that recommended changes to the Department of Liquor Control’s (DLC) practices within the current
structure. OLO also outlined four alternative ways to generate revenue for the County Government from the sale of alcohol in the County.

5. The Committee held meetings in February, March, May and June 2015 and heard testimony from stakeholder groups, including DLC customers, restaurateurs, beer and wine store owners, Municipal and County Government Employees Organization (MCGEO) representatives, private wholesalers, public health experts, members of the Alcohol Beverage Advisory Board, and DLC and Executive Branch staff, including representatives of the Police and Health and Human Services Departments. The Committee studied the current system that controls liquor distribution to County-operated retail stores, to private beer and wine stores, and to restaurants and reviewed the history of temperance and the establishment of the DLC in the County. Committee members also received numerous letters, emails, and phone calls from County residents and other stakeholders and various materials provided by the DLC.

6. At the same time the Committee was convening meetings, DLC developed an Improvement Action Plan that Executive Branch staff presented at the Committee’s June 19, 2015 meeting. The Committee strongly recommends that the Executive Branch move forward immediately to implement these planned improvements for DLC’s systems and operations. One important aspect of this Action Plan that the Committee strongly endorses is a plan to expand the number of county-run retail outlets and improve the customer experience at all stores – to generate significant additional profits for the County.

7. The Committee received information summarizing a significant amount of feedback from retail licensees in Montgomery County who are dissatisfied with DLC’s process for distributing the category of products that DLC calls “special order” products – which are products not regularly carried as inventory in DLC’s warehouse, but instead are purchased by DLC in response to a specific order from a licensee, retail store, or customer at a retail store.

8. During the Committee’s deliberations, Committee members concluded that Option 4 from OLO Report 2015-6 – which would allow the wholesale distribution of special order beer and wine products in Montgomery County by private wholesalers – presents an opportunity to improve DLC operations and better serve restaurant and beer and wine store owners without disrupting DLC’s profits or County Government jobs. OLO’s report estimates that the County could lose up to $5-7 million in gross profit annually and up to 15 employee positions by implementing this change. OLO also estimates that these losses would be mitigated by expanding DLC’s retail operation and/or establishing a fee for private distributors. In the FY16 Budget, the Council supported the Executive’s proposal to open three new DLC retail stores, adding approximately 22 new positions. The County’s current stores generated an average of $795,000 in gross profit per store in FY13, so three new stores could be expected to generate at least an additional $2,385,000 annually. The
Committee urged the Executive to develop a strategic plan for continuing to expand and modernize DLC's retail operation.

9. The Committee also concluded that the County Government should establish a fee on the private wholesale distribution of alcoholic beverages in the County to replace all or a portion of DLC profits lost due to private wholesale distribution of special order beer and wine in the County.

10. The Committee also supports this change because it simply shifts the sale and distribution of products already sold in the County from one wholesaler (DLC) to another (private wholesalers). Consequently, the change may not have a direct impact on the quantity of alcohol consumed in Montgomery County – mitigating impacts on public health.

11. The Ad Hoc Committee on Liquor Control recommended that the Council adopt a resolution urging the Montgomery County Delegation, the Maryland General Assembly, and the Governor to amend State law to allow private businesses to sell wholesale “special order” beer and wine products in Montgomery County and allow Montgomery County to institute a wholesale distribution fee or charge in the County.

**Action**

The County Council for Montgomery County, Maryland approves the following resolution:

For many years, Council members have received feedback from stakeholders in the County outlining dissatisfaction with certain aspects of DLC’s operations. The County Council established the Ad Hoc Committee on Liquor Control to conduct a thorough examination of the structure and operations of the Department of Liquor Control and determine appropriate changes to the structure of alcohol distribution in Montgomery County.

During the Committee’s deliberations, one of the most significant recurring issues brought to the Committee’s attention was persistent concern by retail licensees in the County (owners of restaurants and private beer and wine stores) with DLC’s current process for the sale and distribution of special order products – particularly special order beer and wine. Licensees described problems with DLC’s systems that impact their ability to obtain the alcoholic beverage products that they rely upon to run their businesses. It is the sense of the County Council that, to date, the DLC has not been able to effectively manage the special order system, therefore allowing the private wholesale distribution of special order beer and wine to County retail licensees will help alleviate licensees’ concerns and positively impact their businesses while having the least amount of impact on DLC employees and revenue generated by DLC. The Council believes that this change must be effectively revenue neutral with the implementation of a wholesale distribution fee or charge and the expansion of the County’s retail liquor outlets and that private special order distribution should not proceed until necessary state legislation is enacted to generate those revenues. The Council believes that this change will make Montgomery County more competitive in attracting high quality restaurants, entertainment venues, and beer and wine stores, which will improve quality of economic activity for County businesses.
Therefore, the Montgomery County Council requests that the Montgomery County Delegation, the General Assembly, and the Governor enact legislation allowing private licensed wholesalers to distribute “special order” beer and wine products in Montgomery County to retail alcoholic beverage license holders. The Council further requests that the Governor and Maryland General Assembly enact legislation allowing the Montgomery County Government to implement a wholesale alcoholic beverage distribution fee or charge in the County to replace the County’s lost revenue from this change.

The Council requests the amendment of State law to implement the following changes to Montgomery County’s alcohol distribution system:

1. The classification of special order items will be the final responsibility of the County Department of Liquor Control.

2. Allow private licensed Maryland wholesalers to sell and distribute special order beer and wine products to retail licensees in Montgomery County. DLC would also continue to sell and distribute special order beer and wine products for distributors that would prefer not to deliver directly to customers in the County. DLC would maintain control of the sales and distribution of all stock beer and wine products.

3. Establish the following process for DLC to classify items as stock or special order:
   a. At the time when State legislation goes into effect, all items classified by DLC as special order items would remain classified as special order unless the entity from which DLC purchases the item (either producer or wholesaler) agrees in writing, after a formal request from DLC, that the item should become a stock item or a sufficient volume is achieved which warrants reclassification as a stock item.
   b. As under current practice, producers or distributors would be required to list products for sale in Montgomery County with DLC. DLC should process requests to list items for sale expeditiously.
   c. When a producer or wholesaler lists with DLC an item that is new to the national (or Maryland) market, DLC must determine at that time whether the item will be classified as stock or special order. Items that DLC classifies as special order would remain special order unless the entity registering the item agrees in writing, after a formal request from DLC, that the item should be a stock item or a sufficient volume is achieved which warrants reclassification as a stock item.
   d. DLC can choose to reclassify a stock item as a special order item at any time. Once an item has been reclassified as special order, the item will remain special order unless the entity from which DLC purchases the item agrees in writing
that the item should be a stock item or a sufficient volume is achieved which warrants reclassification as a stock item.

e. DLC should maintain a list of special order items for sale in the County and the name of the wholesalers from which licensees can purchase the items.

4. Allow the Montgomery County Government to establish a fee or charge on private wholesalers selling special order beer and wine to Montgomery County licensees – either through a direct fee or through establishment of a permit charge. The cost of the fee or charge should:

a. Be based on the volume of alcohol sold by private distributors only to retail licensees in Montgomery County.

b. Replace DLC estimated revenue lost by allowing the sale of special order beer and wines by private wholesalers.

c. Be structured in a way that does not impact prices in other jurisdictions.

d. Be set and charged by Montgomery County.

County Government representatives from the Executive and Legislative branches will consult with State legislators to draft appropriate legislation to institute a fee or charge.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council