Meeting Location: City Council Chambers, 200 Civic Center Way, El Cajon, CA
http://www.ci.el-cajon.ca.us/dept/comm/planning.html

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. CHAIRPERSON’S WELCOME

V. PUBLIC COMMENT:
   (This is the opportunity for a member of the public to address the Commission on any item of
   business within the jurisdiction of the Commission that is not on the agenda. Under state law no
   action can be taken on items brought forward under Public Comment except to refer the item to
   the staff for administrative action or to place it on a future agenda.)

VI. CONSENT CALENDAR

VII. PUBLIC HEARINGS

   2. ALCOHOL SALES – AMENDMENT OF ZONING CODE NO. 423
      (This project is also scheduled for the Planning Commission meeting on August
      12 and City Council meeting on August 27, 2013 at 7:00 p.m.)
      This is the first of two public hearings before the Planning Commission on a
      proposed amendment to the El Cajon Municipal Code Title 17 that proposes to
      require land use permits for newly established alcoholic beverage sales activities,
      confers deemed approved status for legal nonconforming existing off-sale
      alcoholic beverage sales activities, provides standards for the continued
      operation of alcoholic beverage sales establishments, sets forth grounds for the
      modification, revocation and termination of conditional use permits and deemed
      approved status for establishments violating this chapter. Furthermore, it
      provides a hearing process to review violations of the standards contained in this
      chapter in order to protect the general health, safety, and welfare of the residents
      of the city of El Cajon and to prevent nuisance activities where alcoholic
      beverage sales occur.

VIII. OTHER ITEMS FOR CONSIDERATION

IX. STAFF COMMUNICATIONS

X. COMMISSIONER REPORTS/COMMENTS

XI. ADJOURNMENT

This Planning Commission meeting is adjourned to July 22, 2013 at 7 p.m.

*Decisions and Appeals*: A decision of the Planning Commission is not final until the appeal period expires 10 days from
the date of transmittal of the Commission’s resolution to the City Clerk. The appeal period for the items on this Agenda
will end on Thursday, July 18, 2013 at 5:30 p.m., except that Agenda items which are forwarded to City Council for final
action need not be appealed.
MINUTES

PLANNING COMMISSION MEETING

June 24, 2013

The meeting of the El Cajon Planning Commission was called to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE

COMMISSIONERS PRESENT: Anthony SOTTILE, Chairman
Star BALES
Adel DANKHA
Darrin J. MROZ

COMMISSIONERS ABSENT: Paul CIRCO, Vice Chairman

STAFF PRESENT: Manjeet RANU, Planning Manager / Planning Commission Secretary
Michael REID, Staff Attorney
Noah ALVEY, Associate Planner
Patricia HAMILTON, Secretary

SOTTILE explained the mission of the Planning Commission.

CONSENT CALENDAR
Motion was made by BALES, seconded by SOTTILE, to adopt the minutes of the Planning Commission meeting of May 6, 2013 and the minutes of the Special Meeting of the El Cajon City Council and Planning Commission of May 28, 2013; carried 3-0 (Mroz abstained, Circo absent).

PUBLIC HEARING ITEMS

AGENDA ITEM NO. 2 – RAZUKI MALL – AMENDMENT OF CONDITIONAL USE PERMIT NO. 2169
This was a public hearing on a request to modify project phasing requirements. The subject property is addressed as 861 East Main Street. This project is exempt from the California Environmental Quality Act (CEQA).

In a PowerPoint presentation, ALVEY summarized the staff report.

SOTTILE confirmed with ALVEY that the occupancy certificate would not be issued for the new building until the existing liquor store building is demolished.
SOTTILE opened the public hearing and invited any speakers to the podium.

Robert BERGSTROM, owner of Quality Thrift, approached the podium and spoke in opposition to the project. He said he was originally told there would be a wall constructed between the two properties, but didn’t believe at the time the wall would be 35’ high and extending the length of his property almost 300 feet to the rear. This wall would completely block off all visibility and air flow to his property because he already has a 30 foot wall on the opposite side. He also had issues with the five foot rise of dirt extending the entire length of the property. He was told the building would be 29 feet, but the raised ground level would now put the building wall height to 35 feet.

SOTTILE asked staff if the proposed wall is to be 35 feet.

ALVEY responded the originally approved project has conditions of approval from the Public Works Department, which include typical storm water compliance issues. One area they are required to analysis is the drainage on the property to make sure all drainage that falls on any new buildings and new parking lots goes into the storm water filtration mechanisms. This water needs to be treated before it enters the storm drain system. So the solution the applicant proposed was to increase the elevation of the site in order to allow those treatment areas to proceed throughout the site and down to the storm drain system.

SOTTILE asked if the elevation of 35 feet was for the wall or the building.

ALVEY answered the grading and drainage plan that was authorized did include fill material being brought onto the site in order to address those drainage issues. ALVEY then displayed the exterior elevations showing the position of the building to the adjacent property.

SOTTILE stated that from looking at the elevations, it appeared the wall is actually the rear wall of the building.

ALVEY answered in the affirmative. The wall of the building will be directly on the property line. Commercial zoning regulations for this site do not require a setback from the adjacent commercially zoned property. In his review of the original staff report, it indicated the height for the building would be 29 feet and with the additional topography it would be within the 35 foot height limitation.

ALVEY added the applicant was in attendance and may be able to address some of the required storm water conditions put in place prior to approval of their project.

RANU also added that the City did issue a grading permit for the project under which the applicant performed the work.

MROZ asked if BERGSTROM’S property line went all the way back to the residential houses.
BERGSTROM answered that the line does go back 275 feet, which includes the length of his property. He owns the residences with four apartment units as well. He added that originally he was told they would build a retaining wall; therefore, he agreed they could remove his fence and construct the new wall between the properties. They could also have access to his property for that purpose. Now, he finds the wall will be a 35 foot solid wall going all the way down the property line. He also doesn't believe there is a need for the five foot dirt rise for drainage. He requested the Commissioners to take into consideration his concerns.

SOTTILE confirmed with BERGSTROM that he understood that most of the wall was actually the building itself and assured him the Engineering Department knows their business in regards to drainage.

MROZ confirmed with BERGSTROM that he did receive the original notice sent out last year when this project first came before the Planning Commission and City Council. However, the applicant told him at that time he was told they were going to build three small buildings, not a 35 foot wall with five feet of dirt underneath. If he was aware of this at the time, he would have objected to the plan right away.

Chris MORRIS, attorney representing the applicant, spoke next. He said he was willing to answer any questions; however, this part of the application had already been approved. He did sympathize with the adjacent property owner and he has talked to the applicant who will try to mitigate any issues affecting the adjacent property’s view. But, the elevations and grading plan were already approved and acted on. The only issue before the Commission was on the phasing of the project.

SOTTILE confirmed with MORRIS the building height would actually be less than 35 feet. The roof of the building will be lower than the wall height to accommodate heating and air conditioning equipment, but because of the grading condition imposed, the property is going to be higher than BERGSTROM’S property at ground level.

In answer to MROZ, MORRIS advised that they agree to all conditions of approval.

Motion was made by MROZ, seconded by BALES, to close the public hearing; carried 4-0.

SOTTILE noted the height of the building is high and the Commission was considering heights in the Housing Element to include even higher high-rise buildings, however, this property does not fall within the Specific Plan 182 boundaries. It does, however, meet all the zoning codes.

BALES noted that from her observance of the area, there are mostly walls separating properties. She also felt bad for the adjacent property owner; however, it did appear that raising the ground level for the wall was the only solution. Once the wall was up, possibly trees and new landscaping would help make the project more attractive.

MROZ reminded all that they were only able to act on the phasing of the project, but suggested that the adjacent property owner could bring his case before City Council.
DANKHA agreed with other Commissioners.

SOTTILE also wanted to sympathize with the adjacent owner; however they needed to do the right thing relative to drainage, since El Cajon has been prone to flooding in the past from heavy rains. He added that this project would be an improvement to the area, and that the Commissioners could not decide on the height of the wall, only the phasing issue.

Motion was made by MROZ, seconded by BALES, to adopt the proposed Resolution No. 10728, granting Conditional Use Permit No. 2169, subject to conditions; carried 4-0.

The appeal for this item ends at 5:30 p.m., Thursday, July 8, 2013.

**AGENDA ITEM NO. 3 – OFF-SITE EXCESS AUTO SALES INVENTORY STORAGE LOTS - AMENDMENT OF ZONING CODE NO. 424**

This was a public hearing on a City-initiated proposal to amend Title 17 (Zoning) of the El Cajon Municipal Code to allow used vehicles in addition to new vehicles to also be stored off-site on a temporary basis.

RANU summarized the staff report.

MROZ mentioned that two years is a long time and asked if the storage could be at various locations throughout the City.

RANU responded that there are a lot of underutilized properties throughout the City in our commercial corridors where this can be done. One area where staff felt it would not be appropriate is the neighborhood commercial zone because it is intended to serve neighborhoods with housing.

MORZ asked if the lots needed to be paved.

RANU answered that under the current code the lots could be either paved or unpaved. For storm water purposes it sometimes is better to have the lot unpaved as long as it is stabilized so no air quality issues arise. This determination is made by the City Engineer.

SOTTILE opened the public hearing and invited any speakers to the podium.

No speakers approached the podium to speak on this item.

MROZ asked if vacant land in the redevelopment area could be used.

RANU said it could be done in the redevelopment project area, but the City does not have any resources to contribute, nor from a policy standpoint the City would find it beneficial to do that.
MROZ added the reason he was asking is the KIA dealership is right across the street from a large vacant land parcel in the redevelopment area and could the car dealership take advantage of this land, or was it on the market for sale.

RANU responded that the City would have to go through the disposal process for former Redevelopment Agency properties that the Successor Agency now owns. The Agency must wait for the State of sign off on our property management plan in order to advise us when we can commence to dispose of these properties. Any use of the property in the interim would have to be presented to the State Department of Finance through full disclosure. He disclosed that he sits on the Oversight Board.

Motion was made by MROZ, seconded by BALES, to close the public hearing; carried 4-0.

Motion was made by BALES, seconded by MROZ, to adopt the proposed Resolution No. 10727, as presented recommending City Council approval of Amendment of Zoning Code No. 424, subject to conditions; carried 4-0.

OTHER ITEMS FOR CONSIDERATION

STAFF COMMUNICATIONS
RANU mentioned the Housing Element community notices were sent out to 996 property owners and staff has been successful in fielding calls from the public. Also the negative declaration is to be published in the next couple of days. He reminded the Commissioners that the alcohol sales land use workshop meeting is scheduled for July 8, 2013 and it will be a public hearing.

COMMISSIONER REPORTS/COMMENTS
BALES commented on the East County Arts Association upcoming event.

ADJOURNMENT
Motion was made by SOTTILE, seconded by BALES, to adjourn the meeting of the El Cajon Planning Commission at p.m. this 24th day of June, 2013 until July 8, 2013, at 7:43 p.m.; carried 4-0.

___________________________________
Anthony SOTTILE, Chairman

ATTEST:

____________________________
Manjeet RANU, AICP, Secretary
AGENDA ITEM NO. 2

SUBJECT: ALCOHOL SALES AND DEEMED APPROVED ALCOHOL SALES REGULATIONS ORDINANCE – AMENDMENT TO EL CAJON MUNICIPAL CODE TITLE 17 (ZONING)

This is the first of two public hearings before the Planning Commission on a proposed amendment to the El Cajon Municipal Code Title 17 that proposes to require land use permits for newly established alcoholic beverage sales activities, confers deemed approved status for legal nonconforming existing off-sale alcoholic beverage sales activities, provides standards for the continued operation of alcoholic beverage sales establishments, sets forth grounds for the modification, revocation and termination of conditional use permits and deemed approved status for establishments violating this chapter. Furthermore, it provides a hearing process to review violations of the standards contained in this chapter in order to protect the general health, safety, and welfare of the residents of the City of El Cajon and to prevent nuisance activities where alcoholic beverage sales occur.

Location: Citywide
Applicant: City of El Cajon
Project Planner: Anthony Shute / 619-441-1742
Email: tonys@cityofelcajon.us

RECOMMENDED ACTIONS:

1. Open the public hearing and receive testimony;
2. Direct the staff to make any edits, changes or deletions to the proposed ordinance; and
3. Continue the public hearing to August 12, 2013.

BACKGROUND

On January 22, 2013, the City Council identified their interest in addressing the performance of off-sale alcohol outlets with the intent of “cleaning up” the City by addressing the negative impacts to the community from the sale and consumption of
alcohol. Specifically, the Council’s direction was to develop land use regulations for new off-sale establishments, including location restrictions (impacted areas), signage, visibility, hours of operation, etc.; create a deemed approved ordinance status to apply to all off-sale outlets less than 15,000 square feet, including the provisions for fines and penalties for noncompliance, and due process; and implementation and enforcement procedures.

On February 26, 2013, the Council was presented with detailed information regarding off-sale alcohol outlets and their associated effects, crime statistics, governing City regulations and policies, project goals, alternatives, and legal considerations. The Council then adopted Resolution No. 16-13 directing the Planning Commission to hold hearings and consider amendments to the Zoning Code regarding “Alcohol Vendors” and to create a “deemed approved” ordinance. During this meeting, the Council conveyed to the small alcohol vendors (markets) that while these regulations are being considered, they have an opportunity to voluntarily police themselves. Subsequently, on May 6, 2013, the Planning Commission was presented with the Council’s direction, the same associated background information, a project schedule, the proposed ordinance framework, and opportunities for community input.

The purpose of this meeting is to engage the Commission’s input and direction regarding the proposed ordinance. A second public hearing is planned for August 12, 2013 for the Commission to refine the proposed draft ordinance with the intent that the Commission will be able to forward its recommendation to the City Council.

COMMUNITY OUTREACH

To date, City staff has met with the Neighborhood Market Association, Communities Against Substance Abuse, the Institute for Public Strategies and a few small alcohol sales establishment owner/operators on this issue. Moreover, the Planning Division sent a courtesy notice of this public hearing along with the proposed ordinance on June 24, 2013 to community stakeholders, individuals who spoke on this issue at the City Council meeting on February 26, and to each off-sale alcohol outlet establishment owner and manager. Additionally, these documents were also posted to the City’s website on June 25, 2013.

STAKEHOLDER EFFORTS

The Neighborhood Market Association represents a portion of the small market retailers and liquor stores in El Cajon. The Association has informed staff that they have collaborated with their members to address the nuisance issues raised at the February 26, 2013 City Council hearing. These efforts include the removal of excessive alcohol advertising, the posting of warning signs to curb panhandling and loitering, and property
maintenance. Staff has not confirmed that represented markets have participated in this program.

Communities Against Substance Abuse (CASA) is a local non-profit organization whose mission is to prevent substance abuse through research, education, advocacy, and service. CASA submitted a “wish list” of standards to the staff for review and possible inclusion in the proposed ordinance. See Attachment No. 6 for reference.

PROPOSED ZONING CODE AMENDMENT

The proposed ordinance is designed to empower the City of El Cajon to manage alcohol sales within its jurisdiction by exercising land use regulatory authority, which will enable the City to have local control over alcohol outlets. More specifically, the proposed alcohol ordinance is aimed at regulating retail alcohol outlets in a comprehensive fashion through both conditional use permit (CUP) and Deemed Approved provisions. By including both of these provisions, the City will distinguish between pre-existing and new alcohol outlets. This provides the City with as much regulatory control over existing outlets as is permissible under the state statutory framework.

The proposed Zoning Code amendment repeals the existing Alcohol Sales ordinance and replaces it with an Alcohol Sales ordinance that is comprehensive, in compliance with legal regulations, and enforceable. The proposed ordinance is designed to meet the Council’s direction and includes the following:

Deemed Approved

Deemed Approved means that the legal nonconforming status of a legally established off-sale alcohol establishment is removed and a “deemed approved status” is applied. Deemed Approved regulations are proposed as a means of imposing performance standards on legal nonconforming retail alcohol outlets and are designed to reduce nuisances and criminal activity in the surrounding areas. Deemed approved gives the City greater land use authority over existing outlets.

Immediate Effect

The proposed ordinance requires the Community Development Department to notify all existing legal nonconforming off-sale outlets less than 15,000 sq. ft. (59 outlets) of their Deemed Approved status. This notification will include a copy of the performance standards with the requirement that they be posted and that the activity is required to comply with the deemed approved regulations, such as Responsible Beverage Sales training. Deemed Approved status will continue so long as the seller complies with the
performance standards found in Section 17.210.230. Essentially, the ordinance consolidates and makes clear existing nuisance standards and abatement tools in one place and transparently makes them applicable to existing outlets less than 15,000 sq. ft. and outlets of any size that devote more than 10 percent of the floor area to alcohol sales. There are otherwise no new limitations on the operation of these existing businesses.

**Subsequent Nuisance Provisions**

An off-sale outlet’s Deemed Approved status could change if the City finds nuisances, the outlet is not in compliance with the deemed approved performance standards and corrective measures are unsuccessful. Only after notice and a hearing before the Planning Commission, whereby if the outlet is found not in compliance by the Commission, the Commission may suspend, modify or revoke the deemed approved activity’s Deemed Approved status or impose additional or amended conditions listed in Section 17.210.120 and operational standards in Section 17.210.100. This ordinance authorizes the Planning Commission the ability to revoke land use approval for recurring or serious violations, which would close an off-sale outlet.

**Compliance & Investigative Procedures**

In order to ensure adherence to the proposed performance standards and regulations, investigative procedures have been developed in accordance with those found in Chapter 1.14 (*Administrative Citation Procedures*) of the El Cajon Municipal Code (ECMC). These series of steps include an on-site observation and inspection of the premises to assess the activity’s compliance with the deemed approved performance standards. If violations are found, then an administrative citation process begins with a warning and may lead to subsequent fines until corrective measures are taken to remedy the violation(s).

The proposed ordinance includes language that allows the City to bypass citation steps and go directly to a hearing before the Planning Commission if the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action. This process is already part of the Municipal Code in the Chapter 1.14 (*Administrative Citation Procedures*) and 1.16 (*Nuisance*).

**Appeals**

The proposed code amendment makes reference to appeal steps that may be taken by any person who has received a citation in accordance with ECMC Chapter 1.14 (*Administrative Citation Procedures*). This process includes an administrative hearing before a hearing officer, and if necessary, subsequent action and or appeals before the Planning Commission and the City Council.
Penalties & Fines

Penalties and fines may be applied, if warranted, to any alcohol establishment, and are a means to ensure compliance with this ordinance. This proposed section makes the connection with the existing “General Penalty” section found in ECMC Chapter 1.24 that grants the City the ability to impose fines and procedures for applying civil penalties. It also permits fines up to $2,500 for each infraction per day. Finally, it allows for cost recovery incurred by the City in the correction, abatement and prosecution of a violation. The above compliance, investigative, appeal steps, penalties, and fines are the same for new on-sale and off-sale establishments under the proposed ordinance.

Substantial Modification/Change to Deemed Approved Establishments

Substantial modifications to deemed approved establishments make the establishment subject to all the requirements of a new off-sale establishment. A CUP would be required.

New Off-Sale Establishments

Distance Requirements

A new off-sale establishment may only be located in a census tract with capacity for additional off-sale licenses, as defined by Alcohol Beverage Control (ABC), with low to average crime rates, as defined by the Police Department. New off-sale establishments may include a liquor store or convenience markets with beer and wine sales. The existing distance requirements from sensitive uses, 600-feet, have been carried forward from the existing ordinance. However, the distance criteria from sensitive uses does not apply to a convenience market with a maximum of 10 percent of the retail display area devoted to the sale and display of alcoholic beverages. This is also a carryover from the existing alcohol sales ordinance. The proposed ordinance now includes a 600-foot separation from other off-sale outlets to prevent a concentration of outlets in an area of the City. The capacity for additional licenses and separation criteria limit the potential areas for new off-sale outlets to the Fletcher and Granite Hills neighborhoods under existing conditions.

Operational Standards & Public Nuisance Prevention Measures

New operational standards have been added to prevent disorderly conduct, and include alcohol limitations to prevent sales to obviously intoxicated persons. Existing State law prohibits the sale of alcohol to such persons (Business & Professions Code Sections 25602(a) and 23001); (397 PC). Product sales limitations include wine in less than 750 milliliter containers, fortified wine, airline bottles, and beer, ale or malt liquor in containers
greater than 32 ounces, except kegs or other containers of two gallons or more, which are intended to dispense multiple servings. Public nuisance prevention measures have also been added to ensure compatibility with surrounding areas.

Findings

The proposed ordinance includes specific findings for new off-sale outlets which are in addition to the typical conditional use permit findings already found in Section 17.50 of the ECMC. The new findings are designed to complement conditional use permit findings and give proper justification for any conditions and/or operating standards that may be imposed on a new establishment.

Optional Conditions of Approval

Optional conditions of approval have been included to ensure compatibility when needed. These can be applied on a case-by-case basis and tailored to the specific application and the surrounding neighborhood. A complete list of these conditions can be found in Section 17.210.120 of the proposed ordinance.

New On-Sale Establishments

New on-sale standards, including separation requirements from sensitive uses and to other alcohol establishments (on-sale and off-sale) have been carried forward from the existing ordinance and organized with general operating standards to have a consistent degree of applicability with off-sale outlets. Findings in addition to the typical conditional use permit findings have also been added. No substantive changes were made to the on-sale regulations.

Regulatory Fee

The proposed ordinance includes a regulatory fee that would be established by a future City Council resolution. There is no fee amount included with this amendment. The fee would be applied to all off-sale alcohol establishments that either have a Deemed Approved status or obtained a conditional use permit after the effective date of this ordinance. The fee would provide for the administration and enforcement of the proposed ordinance so as to recover the total cost to implement.

Summary

The Business and Professions Code §23790 grants cities the ability to impose land use regulations upon new alcohol establishments, but also restricts their ability to impose new
conditions upon existing operations, including legal nonconforming establishments. However, a city can exert a certain degree of control over alcohol outlets through its inherent authority to regulate nuisances through the adoption of ordinances designed to prevent and abate nuisance activity around businesses that sell alcoholic beverages. The right to control and abate nuisance and criminal activities by ordinance applies to all alcoholic beverage establishments, including those in operation before an ordinance’s effective date. Cities may also regulate alcohol outlets on an individual basis through the traditional nuisance abatement authority by declaring a building or place where alcohol is unlawfully sold a public nuisance. The Unlawful Liquor Sale Abatement Law (Penal Code §§ 11200 – 11207) provides cities with the ability to declare and abate a nuisance when an establishment is selling liquor unlawfully. If a city finds that off-sale alcohol sales establishments are violating laws, and they have a negative effect on the health, safety, and general welfare of those living and working in the area, one available course of action is to declare the activity a public nuisance.

Staff believes that the proposed ordinance meets the City Council’s intent established by Resolution No. 16-13 on February 26, 2013. The proposed ordinance has been developed in collaboration with the City Attorney’s Office, who has reviewed it for consistency with governing statutes and case law. The Police Department also participated and reviewed the ordinance for implementation effectiveness.

NEXT ACTIONS

The Planning Commission is requested to review the proposed ordinance and provide feedback along with other options consistent with the City Council’s general direction given on February 26, 2013. A subsequent Planning Commission public hearing is scheduled for August 12, 2013, where the Planning Commission will review any revisions to the proposed ordinance and forward its recommendation to the City Council.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This project is exempt pursuant to CEQA Guidelines Subsection 15061(b)(3), the “General Rule,” which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed project regulates alcoholic beverage sales activities, confers Deemed Approved status on legal nonconforming off-sale alcohol establishments, and provides compliance procedures to ensure adherence, but does not in itself, directly or indirectly, result in a physical change to the environment.
PUBLIC NOTICE

Notice of this public hearing was published in the East County Gazette on June 27, 2013, and to anyone who requested such notice in writing, in compliance with Government Code Sections 65090, 65091, and 65092, as applicable. Additionally, as a public service, the notice was posted in the kiosk at City Hall and on the City’s website under “Public Hearings/Public Notices.” A community notice and the proposed ordinance were mailed to each off-sale alcohol outlet establishment, licensee and store manager on record, including community stakeholders and those who spoke at the City Council public hearing on February 26, 2013. These documents were also posted along with an ordinance summary breakdown on the Planning Division’s web page under “Proposed Alcohol Sales Zoning Code Amendment.”

ATTACHMENTS

1. Proposed Ordinance Index
2. Proposed Alcohol Sales and Deemed Approved Alcohol Sales Regulations Ordinance
3. Summary of Public Health Findings
4. Public Hearing Notice
5. Planning Commission May 6, 2013 agenda packet
6. Planning Commission May 6, 2013 meeting minutes
7. Communities Against Substance Abuse “Wish List”
# Proposed Alcohol Ordinance Index

<table>
<thead>
<tr>
<th>Category</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning Commission as Decision Maker</td>
<td>17.210.050</td>
</tr>
<tr>
<td>Deemed Approved</td>
<td>17.210.200</td>
</tr>
<tr>
<td>• Performance standards</td>
<td>17.210.230</td>
</tr>
<tr>
<td>• Compliance standards</td>
<td>17.210.250</td>
</tr>
<tr>
<td>• Investigative procedures</td>
<td>17.210.260</td>
</tr>
<tr>
<td>• Penalties</td>
<td>17.210.280</td>
</tr>
<tr>
<td>• Regulatory Fee</td>
<td>17.210.290</td>
</tr>
<tr>
<td>New and Modified Off-Sale Establishments</td>
<td>17.210.070</td>
</tr>
<tr>
<td>• Distance requirements</td>
<td>17.210.090</td>
</tr>
<tr>
<td>• Operational standards</td>
<td>17.210.100</td>
</tr>
<tr>
<td>• Product limitations</td>
<td>17.210.100 (6)(a-h)</td>
</tr>
<tr>
<td>• Public nuisance standards</td>
<td>17.210.100 (7)(1-13)</td>
</tr>
<tr>
<td>• Findings</td>
<td>17.210.110</td>
</tr>
<tr>
<td>• Optional conditions of approval</td>
<td>17.210.120</td>
</tr>
<tr>
<td>New On-Sale Establishments</td>
<td>17.210.130</td>
</tr>
<tr>
<td>• Distance requirements</td>
<td>17.210.140</td>
</tr>
<tr>
<td>• Operational standards</td>
<td>17.210.150</td>
</tr>
<tr>
<td>• Findings</td>
<td>17.210.160</td>
</tr>
<tr>
<td>Compliance Standards</td>
<td>17.210.170 – 190</td>
</tr>
</tbody>
</table>
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF EL CAJON REPEALING CHAPTER 17.210 (ALCOHOL SALES)
of Title 17 (ZONING), of the El Cajon Municipal Code and
adding a new Chapter 17.210 (ALCOHOL SALES AND DEEMED APPROVED
ALCOHOL SALES REGULATIONS) of Title 17 (ZONING) of the El Cajon
Municipal Code

THE CITY COUNCIL OF THE CITY OF EL CAJON DOES ORDAIN AS
FOLLOWS:

SECTION 1. Based upon the record as a whole, the City Council hereby finds
that the proposed Zoning Code amendment is exempt from CEQA pursuant to the
“General Rule” that CEQA only applies to projects that have the potential for causing a
significant physical effect on the environment, (CEQA Guidelines, Section 15061 (b)
(3)). The proposed amendments are minor and administrative in nature and do not raise
this project to a level of significance that warrants CEQA analysis because the intensity
of allowable development is not increased and there are no potentially significant
environmental effects.

SECTION 2. Chapter 17.210 of Title 17 of the El Cajon Municipal Code is hereby
repealed.

SECTION 3. A new Chapter 17.210 of Title 17 of the El Cajon Municipal Code is
hereby added to read as follows:

Chapter 17.210 Alcohol Sales and Deemed Approved Alcohol Sales Regulations.


This chapter shall be known as the “Alcohol Sales and Deemed Approved
Alcohol Sales Regulations Ordinance.”


The purpose of this chapter is to list regulations pertaining to the establishment
and conduct of alcohol sales in the city under simplified headings.

This chapter requires land use permits for newly established alcoholic beverage
sales activities, confers deemed approved status for legal nonconforming existing off-
sale alcoholic beverage sales activities, provides standards for the continued operation
of alcoholic beverage sales establishments, sets forth grounds for the modification,
revocation and termination of conditional use permits and deemed approved status for
establishments violating this chapter, and provides a hearing process to review violations of the standards contained in this chapter in order to protect the general
health, safety, and welfare of the residents of the city of El Cajon and to prevent
nuisance activities where alcoholic beverage sales occur.

Specific purposes for enacting this chapter are as follows:
A. To protect residential, commercial, industrial and civic areas from the harmful effects attributable to the sale of alcoholic beverages and minimize the adverse impacts of nonconforming and incompatible uses;

B. To provide opportunities for alcoholic beverage sales establishments to operate in a mutually beneficial relationship to each other and to other commercial and civic services;

C. To provide mechanisms to address problems associated with the public consumption of alcoholic beverages such as litter, loitering, graffiti, unruly behavior, violence, vandalism, and escalated noise levels;

D. To provide that alcoholic beverage sales establishments are not to become the source of undue public nuisances in the community;

E. To provide for properly maintained alcoholic beverage sales establishments so that the negative impacts generated by these activities on the surrounding environment are mitigated; and

F. To monitor deemed approved establishments to ensure they do not substantially change in mode or character of operation.

This chapter alone does not allow or permit alcoholic beverage sales activities, but only applies to these activities where otherwise allowed or permitted within an involved applicable zoning district. The provisions of this ordinance are intended to compliment the state of California alcohol-related laws. The city does not intend to replace or usurp any powers vested in the California Department of Alcoholic Beverage Control.


A. The provisions of this chapter shall apply to the extent permissible under other laws, to all alcoholic beverage sales establishments, as defined in Section 17.210.040, located in the city of El Cajon that sell alcoholic beverages for on- or off-site consumption.

B. Whenever any provision of the alcohol sales and deemed approved alcoholic beverage sales regulations, and any other provision of law, whether set forth in these regulations, in an existing conditional use permit, or in any other law, ordinance, or regulations of any kind, imposes overlapping or contradictory regulations, or contain restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in the alcohol sales and deemed approved alcohol sales regulations.

The meaning and construction of these words and phrases, as set forth below, shall apply throughout, except where the context clearly indicates a different meaning or construction.

A. “Alcoholic beverage” means alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits, wine, or beer, that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed or combined with other substances, the sale of which requires a ABC license.

B. "Alcoholic beverage sales activity" means the retail sale of alcoholic beverages for onsite or offsite consumption.

C. "Alcoholic beverage sales establishment" means an establishment where an alcoholic beverage sales activity occurs. Alcoholic beverage sales establishments include but are not limited to the following recognized types of establishments: liquor stores; beer and wine stores; convenience markets; markets; neighborhood specialty food markets; retail sales establishments; wine shops; service stations; taverns; clubs; cocktail lounges, ballrooms, cabarets, dance bars, piano bars; billiard or game parlors, bowling alleys; nightclubs, dance halls; cafes, bars, restaurants with bars; full-service restaurants; fast food establishments; and breweries.

D. “California Department of Alcoholic Beverage Control” or “ABC” refers to the department of the state of California empowered to act pursuant to Article 20, section 22, of the California Constitution and authorized to administer the provisions of the Alcoholic Beverage Control Act.

E. “Conditions of approval” means a requirement that must be carried out by the activity by: (1) a new alcoholic beverage sales activity to exercise a land use permit; or (2) a legal nonconforming alcoholic beverage sales activity to comply with deemed approved performance standards and to retain its deemed approved status.

F. “Deemed approved activity” means any legal nonconforming alcoholic beverage sales commercial activity, as defined in subsection J. Such activity shall be considered a deemed approved activity as long as it complies with the deemed approved performance standards set forth in Section 17.210.230.

G. “Deemed approved status” means the permitted use of land for a deemed approved activity. Deemed approved status replaces legal nonconforming status for off-sale alcohol establishments with respect to alcoholic beverage sales commercial activity and remains in effect as long as it complies with the deemed approved provisions and performance standards.
H. “Enforcement officer” means the city manager or designee, and chief of police or designee.

I. “Illegal activity” means an activity, which has been finally determined to be in noncompliance with the deemed approved provisions and performance standards. Such an activity shall lose its deemed approved status and shall no longer be considered a deemed approved activity.

J. “Legal nonconforming alcoholic beverage sales commercial activity” or “legal nonconforming activity” means an off-sale alcoholic beverage sales commercial activity which was a nonconforming use pursuant to Chapter 17.120, and for which a valid state of California Alcoholic Beverage Control license had been issued and used in the exercise of the rights and privileges conferred by the license at a time immediately prior to [insert effective date] of the alcohol sales and deemed approved alcohol sales regulations ordinance. A “legal nonconforming alcoholic beverage sales commercial activity” or “legal nonconforming activity” includes all beverage sales activities of existing off-sale alcoholic beverage establishments that are not in conformance with the regulations applicable to new off-sale alcoholic beverage establishments contained in this chapter, regardless of whether such activities were allowed as part of a conditional use permit granted prior to [insert effective date] of this ordinance. Such an activity shall be considered a deemed approved activity and shall no longer be considered a legal nonconforming activity.

K. “Off-sale alcoholic beverage establishment” means an establishment that conducts retail sales of alcoholic beverages for consumption off the premises where sold.

L. “On-sale alcoholic beverage establishment” means an establishment that conducts retail sales of alcoholic beverages for consumption on the premises where sold.

M. “Operational standards” means regulations for the business practice activities and land use for locations with a conditional use permit issued in conformance with the regulations in this chapter or those further requirements imposed to achieve the purposes of this chapter. Operational standards constitute requirements which must be complied with by an establishment in order to maintain its conditional use permit or deemed approved status.

N. “Performance standards” means regulations for the business practice activities and land use for locations with deemed approved status, in whole or in part, or those further requirements imposed to achieve the purposes of this chapter. Performance standards constitute requirements which must be complied with by an establishment in order to retain its deemed approved status.
O. “Premises” means the actual space in a building devoted to alcoholic beverage sales.

P. “Restaurant” means a bona fide eating place whose predominant function is the service of food and where on-sale of alcoholic beverages is incidental or secondary.

17.210.050 Public hearing by planning commission.

The planning commission shall conduct public hearings and make determinations on whether alcoholic beverage sale establishments are in compliance with conditions of approval, operational standards, or deemed approved performance standards prescribed in these regulations, and may modify, suspend or revoke an establishment’s conditional use permit or deemed approved status in order to obtain the compliance of the particular establishment with the provisions of this chapter. This section is not intended to restrict the powers and duties otherwise pertaining to other city officers or bodies in the field of monitoring and ensuring the harmony of alcoholic beverage sale activities in the city. The planning commission shall have the powers and duties assigned to them by the El Cajon Municipal Code and by this chapter.

17.210.060 Inspection and right of entry.

The sale of alcoholic beverages is a closely regulated industry. The officials responsible for enforcement of the El Cajon Municipal Code or other ordinances of the city or their duly authorized representatives may enter on any site or into any structure open to the public for the purpose of investigation provided they shall do so in a reasonable manner whenever they have cause to suspect a violation of any provision of this ordinance or whenever necessary to the investigation of violations to the conditions of approval, operational standards, or deemed approved performance standards prescribed in these regulations. If an owner, occupant or agent refuses permission to enter, inspect or investigate, premises which are not open to the public, the officials or their representatives may seek an inspection warrant under the provisions of California Code of Civil Procedure section 1822.50 et. seq. All such inspections shall be conducted in compliance with the Fourth Amendment to the United States Constitution.


Except as otherwise provided in this chapter, no person shall establish a new off-sale alcoholic beverage establishment or modify an existing off-sale alcoholic beverage establishment in violation of Section 17.120.030 of this title or an applicable conditional use permit without first obtaining a conditional use permit in the manner provided by this chapter. Furthermore, the standards contained in Sections 17.210.080 through 17.210.120 require new off-sale alcoholic beverage establishments, as defined in this chapter, to secure a conditional use permit in the manner provided in this chapter in order to lawfully engage in the sale of alcoholic beverages from premises located in the city of El Cajon; and require such establishments to manage such premises in accordance with the requirements of such permit, including operational standards and any conditions of approval incorporated as conditions of the permit.

With the exception of a general retail store, a grocery store, or a retail pharmacy that have at least 15,000 square feet of gross floor space, and a maximum of 10 percent of the gross floor area devoted to the sales and display of alcoholic beverages, all alcoholic beverage establishments to which this chapter is applicable shall obtain a conditional use permit pursuant to Chapter 17.50 of this title and satisfy all pertinent conditions prior to the release of the city’s protest.

17.210.090 Distance requirements.

A. No new off-sale alcoholic beverage establishment shall be located within 600 feet of residually zoned property, public or private schools, health care facilities, churches, parks or playgrounds, and existing off-sale alcohol establishments, except:

1. A general retail store, or grocery store, or retail pharmacy with greater than 15,000 square feet of gross floor area and a maximum of 10 percent of the gross floor area devoted to the sale and display of off-sale alcoholic beverages; or

2. A convenience market with a maximum of 10 percent of the retail display area devoted to the sale and display of alcoholic beverages; limited to off-sale beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers. A distance requirement of 600 feet from other off-sale alcohol establishments is applicable to convenience markets.

B. For purposes of this section, distances shall be measured between the closest property lines of the affected locations.

17.210.100 Operational standards – applicable to new off-sale alcoholic beverage sales activities.

A. All new off-sale alcoholic beverage sales activities shall be designed, constructed, and operated to conform to all of the following operational standards:

1. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.

2. That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.
3. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests.

4. That it complies with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual city business license fees.

5. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

6. That it complies with the following alcohol sale limitations:
   a. No wine shall be displayed, sold or given away in containers of less than 750 milliliters, except multipack containers of wine, and multipack wine coolers containing no more than six percent alcohol by volume.
   b. No wine shall be displayed, sold or given away with an alcoholic content greater than 14 percent by volume unless in corked bottles and aged at least two years.
   c. No distilled spirits shall be displayed, sold or given away in containers of less than 375 milliliters, except pre-mixed cocktails.
   d. The display, sale or distribution of 50 milliliters “airline bottles” and 375 milliliters “hip flask” containers is prohibited.
   e. No beer, ale or malt liquor shall be offered for sale in a container with a volume greater than 32 ounces. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings.
f. No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window.

g. No display, sale or distribution of beer or wine, wine coolers or similar alcoholic beverages shall be made from an ice tub, barrel or similar container.

h. All display of alcoholic beverages shall be no closer than five feet from the store entrance.

7. That it complies with the following public nuisance prevention measures:

1. Lighting: Exterior areas of the premises and adjacent parking lots shall be provided with sufficient lighting in a manner that provides adequate illumination for alcohol establishment patrons while not spilling onto surrounding residential and commercial properties. A photometric study may be required to demonstrate compliance.

2. Litter: Adequate litter receptacles shall be provided on site and in the building. The premises shall be kept free of the accumulation of litter and shall be removed no less frequently than once each day the business is open.

3. Loitering: The following measures are required:
   
   a. No fixtures or furnishings that encourage loitering and nuisance behavior are permitted on the premises. This includes, but is not limited to chairs, seats, stools, benches, tables, crates, etc.
   
   b. The establishment’s operators or employees shall be required to discourage loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so.
   
   c. No video or other electronic games shall be located in an off-sale alcoholic beverage establishment.
   
   d. No pay phones are permitted outside of the off-sale establishment.

4. Cups: The sale or distribution to the customer of paper or plastic cups in quantities less than their usual and customary packaging is prohibited.
5. Signage: There shall be no exterior advertising of alcoholic products, or tobacco and paraphernalia or similarly controlled products.

6. Signs: The following signs shall be required to be prominently posted in a readily visible manner on an interior wall or fixture, and not on windows, in English, Spanish, Arabic and the predominant language of the patrons:
   
a. “California State Law prohibits the sale of alcoholic beverages to persons under 21 years of age.”

b. "No Loitering or Public Drinking."

c. “It is illegal to possess an open container of alcohol in the vicinity of this establishment.”

7. Presentation of Documents: A copy of the conditions of approval and the California Department of Alcoholic Beverage Control license shall be required to be kept on the premises and presented to any enforcement officer or authorized state or county official upon request.

8. Mitigating Alcohol Related Problems: The establishment shall be required to operate in a manner appropriate with mitigating alcohol related problems that negatively impact those individuals living or working in the neighborhood including but not limited to sales to minors, the congregation of individuals, violence on or near the premises, drunkenness, public urination, solicitation, drug-dealing, drug use, loud noise and litter.

9. Drug Paraphernalia: An off-sale alcohol establishment shall be prohibited from selling drug/tobacco paraphernalia products as defined in Health and Safety Code sections 11014.5 and 11364.5. “Drug paraphernalia” means all equipment products and materials of any kind that are used intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the California Uniform Controlled Substances Act commencing with California Health and Safety Code section 11000.

10. Prohibited Vegetation: Exterior vegetation shall not be planted or maintained that could be used as a hiding place
for persons on the premises. Exterior vegetation may be planted and maintained in a manner that minimizes its use as a hiding place.

11. Window Obstructions: To ensure a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance, no more than 15% of windows and entry doors shall be blocked by signs, vending machines, shelves, racks, storage, etc.

12. Training: Each off-sale operator and their employees shall complete the Responsible Beverage Service (RBS) Training component. To satisfy this requirement, a certified program must meet the standards of the Alcohol Beverage Control Responsible Beverage Service Advisory Board or other certifying/licensing body designated by the state of California. Proof of completion shall be submitted to the El Cajon police department.

13. Posting of Documents: A copy of these operational standards, any applicable ABC or city operating conditions, and any training requirements shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

B. Failure to comply with these requirements shall constitute grounds for revocation of a conditional use permit.

17.210.110 Required findings – new off-sale alcoholic beverage sales activities.

In addition to the findings listed in Section 17.50.060, the planning commission shall approve issuance of a conditional use permit to allow a new off-sale alcoholic beverage sales activity upon making the following findings:

A. The proposed establishment meets the locational requirements of Section 17.210.090.

B. The proposed alcoholic beverage sales activity will not aggravate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcoholic beverage sales to minors, noise and littering.

C. The proposed establishment will not detrimentally affect nearby neighborhoods considering the distance of the alcohol establishment to residential buildings, schools, parks, playgrounds or recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug
abuse recovery or treatment facilities, county social service offices, or other alcoholic beverages sales activity establishments.

D. The proposed establishment is not located in what has been determined to be a high-crime area or where a disproportionate number of police service calls occur.

E. The proposed establishment is located in a census tract with capacity for additional off-sale licenses, as defined by the California Department of Alcohol Beverage Control, with low to average crime rates, as defined by the police department annually, subject to the condition that an additional off-sale establishment will not be contradictory to a moratorium.

17.210.120 Conditions of approval – new off-sale alcoholic beverage sales activities.

Conditions of approval that may be imposed as necessary to make required findings include but are not limited to the following:

A. Program: A “complaint response community relations” program adopted and maintained by the establishment conducting the alcoholic beverage sales activity may be required. The program may include the following:

1. Posting at the entry of the establishment providing the telephone number for the watch commander of the police department to any requesting individual.

2. Coordinating efforts with the police department to monitor community complaints about the establishment activities.

3. Having a representative of the establishment meet with neighbors or the applicable neighborhood association on a regular basis and at their request attempt to resolve any neighborhood complaints regarding the establishment.

B. Chilled Alcoholic Beverages: An off-sale alcohol establishment may be prohibited from maintaining refrigerated or otherwise chilled alcoholic beverages on the premises.

C. Hours of Operation: In an off-sale alcohol establishment, the sale of alcoholic beverages may be restricted to certain hours of each day of the week unless limited further by the State of California Department of Alcoholic Beverage Control.

D. Security Cameras: At least two high definition 24-hour time lapse security cameras may be required to be installed and properly maintained on the exterior of the building at locations recommended by the police department capable of color recording and storing a minimum of 30 days of continuous video. All criminal and suspicious activities recorded on this
surveillance equipment must be reported to local law enforcement. To the extent allowed by law, the establishment operators may be required to provide any tapes or other recording media from the security cameras to the police department.

E. Security Guards: An establishment may be required to retain a specified number of security guards. The number of security guards shall vary based upon the specific facts and circumstances of each establishment site and operation. All security guards shall have all required state and city permits and licenses.


Except as otherwise provided in this chapter, no person shall establish a new on-sale alcoholic beverage establishment or modify an existing on-sale alcoholic beverage establishment in violation of Section 17.120.030 of this title or an applicable conditional use permit without first obtaining a conditional use permit in the manner provided by this chapter. Furthermore, the standards contained in Sections 17.210.140 through 17.210.160 require on-sale alcoholic beverage establishments to secure a conditional use permit in the manner provided in this chapter in order to lawfully engage in the sale of alcoholic beverages from premises located in the city of El Cajon; and require such establishments to manage such premises in accordance with the requirements of such permit, including operational standards and any conditions of approval incorporated as conditions of the permit.

17.210.140 Distance requirements.

A. No new on-sale alcoholic beverage establishment shall be located within 1,000 feet of an existing on-sale alcoholic beverage establishment and/or within 600 feet of residentially zoned property, public or private schools, health care facilities, churches, parks or playgrounds, and off-sale alcoholic beverage establishments, except:

1. A restaurant with an ancillary bar with less total square footage than the restaurant eating area; or

2. On-sale alcoholic beverage establishment with alcohol sales secondary and incidental to an approved, complementary, principal use within the boundaries of Specific Plan No. 182; or

3. A craft brewery with an ancillary full service restaurant.

B. For purposes of this section, distances shall be measured between the closest property lines of the affected locations.

C. For the purposes of this section, “secondary and incidental,” shall mean that the sales of alcoholic beverage shall be limited to not more than 25 percent of the gross annual retail receipts generated by the use on the site, which shall be calculated on a quarterly basis, for the prior 12-month
period ending on the last day of the then concluding quarter of year, and shall further mean that sales of alcoholic beverages are not promoted or advertised in any signs, or the name of the business establishment.

D. For the purposes of this section, “principal use,” may include, but is not limited to, live entertainment, participatory sporting activities, museums, theaters, performing arts center owned by a public agency, hotels, or other, similar uses approved by the city council, so long as the location of the sales of alcoholic beverages occurs under the same roof as the principal use, and the owner of the principal use is the owner of the liquor license.

17.210.150 Operational standards – applicable to new on-sale alcoholic beverage sales activities.

A. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.

B. That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.

C. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests.

D. That it complies with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual city business license fees.

E. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

17.210.160 Required findings – new on-sale alcoholic beverage sales activities.

In addition to the findings listed in Section 17.50.060, the planning commission shall approve issuance of a conditional use permit to allow a new on-sale alcoholic beverage sales activity upon making the following findings:
A. The proposed alcoholic beverage sales activity will not exacerbate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcoholic beverage sales to minors, noise and littering.

B. The proposed alcoholic beverage sales establishment will not detrimentally affect nearby neighborhoods considering the distance of the alcohol establishment to residential buildings, schools, parks, playgrounds or recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug abuse recovery or treatment facilities, county social service offices, or other alcoholic beverages sales activity establishments.

C. The proposed alcoholic beverage sales establishment is not located in what has been determined to be a high-crime area or where a disproportionate number of police service calls occur.

17.210.170 Grounds for conditional use permit suspension, revocation or termination.

A. In addition to the grounds for revocation or modification of a conditional use permit contained in Section 17.35.030 of this title, an alcoholic beverage sales establishment’s conditional use permit may be suspended for up to one year, modified or revoked by the planning commission after holding a public hearing in the manner prescribed in Chapter 17.25, for failure to comply with operational standards, training requirements or conditions of approval imposed through their conditional use permit. Notice of such hearing by the planning commission at which it will consider the modification, suspension or revocation of an establishment’s conditional use permit shall be in writing and shall state the grounds therefore. Notice shall be mailed by first-class mail and certified mail return receipt requested at least 10 days before the date of the hearing.

B. Any conditional use permit issued pursuant to the provisions of this chapter shall be subject to the condition, in addition to any and all other conditions, that it shall terminate and cease to apply to any establishment which:

1. Shall have ceased its operation for a period of 90 or more calendar days, and

   a. If there is thereafter filed any application or requested transaction with the California Department of Alcoholic Beverage Control, whereby the laws of the state of California require notice thereof to be filed with the city, and allow the filing of a protest thereon by the city (including person-to-person transfer of existing licenses); or
b. Where after such 90-calendar-day period, the existing license shall have ceased to apply to such establishment; or

2. Where the existing license shall have been surrendered to the California Department of Alcoholic Beverage Control for a period exceeding 180 calendar days.

17.210.180 Investigative procedures of potential violation of conditions of approval and operational standards.

Upon the city’s receipt of a complaint from the public, police department, city official or any other interested person that a conditional use permit activity is in violation of the operational standards and/or conditions of approval set forth in this chapter, the following procedure shall be followed:

A. An enforcement officer shall assess the nature of the complaint and its validity by conducting an on-site observation and inspection of the premises to assess the activity’s compliance with operational standards and/or conditions of approval.

B. If the enforcement officer determines that the activity is in violation of the operational standards and/or conditions of approval, the enforcement officer shall give written notice of the violation to the owner and/or operator of the establishment and seek to remedy the violation under the city’s administrative citation procedures contained in Chapter 1.14 of this code. If, however, the enforcement officer, in his or her sole discretion, determines that the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action, he or she may in lieu of following the administrative citation procedure, refer the matter directly to the planning commission for a hearing at which the establishment’s conditional use permit may be suspended, modified or revoked.

C. Any administrative citation issued under this section shall be issued, processed, and enforced in compliance with all of the provisions of Chapter 1.14 of this code, unless otherwise expressly provided by this chapter. If the owner or operator receiving an administrative citation contests the citation and a hearing is held pursuant to Chapter 1.14, the hearing officer may, in addition to exercising all powers designated in Chapter 1.14, make a recommendation to the planning commission to suspend, modify or revoke the establishment’s conditional use permit if in the judgment of the hearing officer, based upon information then before him or her, such action is necessary to ensure compliance with this chapter. Such recommendation may include the suggestion of additional or amended reasonable conditions on the use, including but not limited to, the conditions listed in Section 17.210.120, and the operational standards listed in Section 17.210.100 of this chapter.
D. If a hearing before the planning commission is conducted on a potential violation in the manner prescribed in Chapter 17.25, it shall determine whether the activity is in compliance with the operational standards and/or conditions of approval. Based on this determination, the planning commission may suspend, modify or revoke the activity’s conditional use permit or impose additional or amended conditions on the use, including but not limited to the conditions listed in Section 17.210.120, and the operational standards listed in Section 17.210.100, of this chapter, based upon the information then before it. In reaching a determination as to whether a use has violated the operational standards or conditions of approval, or as to the appropriateness of suspending, modifying, or revoking of a conditional use permit, or the imposition of additional or amended conditions on a use, the planning commission may consider the following:

1. The length of time the activity has been out of compliance with the operational standards and/or conditions of approval.

2. The impact of the violation of the operational standards and/or conditions of approval on the community.

3. Any information regarding the owner of the activity’s efforts to remedy the violation of the operational standards and/or conditions of approval.

E. “Efforts to Remedy” shall include, but are not limited to:

1. Timely calls to the police department that are placed by the owner and/or operator of the establishment, his or her employees, or agents.

2. Requesting that those persons engaging in activities causing violations of the operational standards and or conditions of approval cease those activities, unless the owner or operator of the activity, or his or her employees or agents feels that their personal safety would be threatened in making that request.

3. Making improvements to the establishment’s property or operations, including but not limited to the installation of lighting sufficient to illuminate the area within the use’s property line, the installation of security cameras, the clearing of window obstructions, the cleaning of sidewalks and the abatement of graffiti within three days.

F. If in the judgment of the planning commission, the operations of the owner or operator of the establishment constitute a nuisance, the owner or operator is unable or unwilling to abate the nuisance and the nuisance is shown to be a threat to the public health and safety of the surrounding neighborhood, the planning commission may suspend, modify or revoke
the activity's conditional use permit. All determinations, decisions, and conditions made or imposed regarding the use of an activity shall run with the land.

G. The decision of the planning commission shall be final and conclusive, unless appealed in writing to the city council within 10 days of planning commission action.

17.210.190 Appeal from suspension, modification or revocation of conditional use permit.

Any applicant or other person aggrieved by a decision of the planning commission from a suspension, modification or revocation of a conditional use permit pursuant to this chapter may appeal the decision to the city council pursuant to Chapter 17.30 of this code.


Except as otherwise provided in this chapter, any off-sale alcoholic beverage establishment not exempt by this chapter and lawfully operating prior to [insert effective date] pursuant to an ABC license that authorizes the retail sale of alcoholic beverages for off-site consumption shall thereafter be an establishment with deemed approved status in accordance with Section 17.210.220. Such an establishment may continue to lawfully operate provided the operation is conducted in compliance with the performance standards contained in Section 17.210.230, has satisfied the applicable training requirement and paid the annual permit fee required by this chapter.


The deemed approved alcoholic beverage sales regulations shall apply to all alcoholic beverage sales activities for off-site consumption existing and operating within the City on [insert effective date], unless exempt by this chapter.


All alcoholic beverage sales commercial activities that were legal nonconforming activities for off-sale alcohol establishments, on [insert effective date], whether or not previously granted a conditional use permit by the city, shall automatically become deemed approved activities as of this date and shall no longer be considered legal nonconforming activities. Each deemed approved activity shall retain its deemed approved status as long as it complies with the performance standards of this ordinance.


The provisions of this section shall be known as the deemed approved performance standards. The purpose of these standards is to control dangerous or
objectionable environmental effects of alcoholic beverage sales activities. These standards shall apply to all deemed approved alcoholic beverage sales activities that hold deemed approved status pursuant to this chapter. An off-sale alcoholic beverage sales activity shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

A. The off-sale alcohol establishment shall not cause adverse effects to the health, peace or safety of persons residing or working in the surrounding area.

B. The off-sale alcohol establishment shall not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.

C. The off-sale alcohol establishment shall not allow repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, or lewd conduct.

D. The off-sale alcohol establishment shall comply with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual city business license fees.

E. The off-sale alcohol establishment's upkeep and operating characteristics shall be compatible with and not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

F. A copy of these performance standards, any applicable ABC or city operating conditions, and any training requirements shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

G. The owners and all employees of the alcohol beverage sales establishment involved in the sale of alcoholic beverages shall complete an approved course in "Responsible Beverage Sales" (RBS) within 60 days of hire for employees hired after the passage of this ordinance or within six months of the passage of this ordinance for existing employees. To satisfy this requirement, a certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service
17.210.240 Notification to owners of off-sale establishments conducting deemed approved activities.

The city's community development department shall notify the owner and/or operator of an off-sale alcohol establishment of each deemed approved activity as shown on their city business license, and also, if not the same, any property owner at the address shown on the county assessor's property tax assessment records, of the activity's deemed approved status. The notice shall be sent by first-class mail and certified mail return receipt requested and shall include a copy of the performance standards in this chapter with the requirement that they be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review. This notice shall also provide that the activity is required to comply with all performance standards, and that the activity is required to comply with all other aspects of the deemed approved regulations. Should the notice be returned, then the notice shall be sent via regular mail. Failure of any person to receive notice given pursuant to this chapter shall not affect the deemed approved status of the activity.

17.210.250 Grounds for deemed approved status suspension, revocation or termination.

A. An alcoholic beverage sales establishment's deemed approved status may be suspended for up to one year, modified or revoked by the planning commission after holding a public hearing in the manner prescribed in Chapter 17.25, for failure to comply with the performance standards set forth in Section 17.210.230. Notice of such hearing by the planning commission at which it will consider the modification, suspension or revocation of an establishment's deemed approved status shall be in writing and shall state the grounds therefore. Notice shall be mailed by first-class mail and certified mail return receipt requested at least 10 days before the date of the hearing.

B. The occurrence of any of the following shall terminate the deemed approved status of the alcoholic beverage sales activity after notice and a hearing in front of the planning commission in accordance with Chapter 17.25, and require the issuance of a conditional use permit in order to continue the alcoholic beverage sales activity:

1. An existing alcoholic beverage sales activity changes its activity so that ABC requires a different type of license.

2. There is a substantial modification to the mode or character of operation.

3. As used herein, the phrase "substantial modification to the mode or character of operation" includes but is not be limited to the following:
a. The off-sale alcoholic beverage sales activity establishment increases the floor or land area or shelf space devoted to the display or sales of any alcoholic beverage.

b. The off-sale alcoholic beverage sales activity establishment extends the hours of operation.

c. The off-sale alcoholic beverage sales activity establishment proposes to reinstate alcohol sales after the ABC license has been either revoked or suspended for a period 90 days or greater by ABC.

d. The off-sale alcoholic beverage sales activity voluntarily discontinues active operation for more than 90 consecutive days or ceases to be licensed by the ABC.

4. A “substantial change in the mode of character of operation” shall not include:

a. Re-establishment, restoration or repair of an existing off-sale alcoholic beverage sales activity on the same premises after the premises have been rendered totally or partially inaccessible by a riot, insurrection, toxic accident or act of God, provided that the re-establishment, restoration or repair does not extend the hours of operation of any establishment or add to the capacity, floor or land area or shelf space devoted to alcoholic beverages of any establishment that sells any alcoholic beverages for off-site consumption.

b. Temporary closure for not more than ninety days in cases of vacation or illness or for purposes of repair, renovation, or remodeling if that repair, renovation, or remodeling does not change the nature of the premises and does not extend the hours of operation of any establishment, or add to the capacity, floor or land area, or shelf space devoted to alcoholic beverages of any establishment that sells any alcoholic beverages for off-site consumption, provided notice is provided to the City.

5. Once it is determined by the City that there has been a discontinuance of active operation for 90 consecutive days or a cessation of ABC licensing, it may be resumed only upon the granting of a conditional use permit as provided in Sections 17.210.070 to 17.210.120 of this chapter. In the event that any active operation is discontinued on a property for a period of 90 consecutive days, such discontinuance shall be presumed to be abandonment of the use by the property owner. At any time after any active operation is discontinued for a period of 90 consecutive
days or more, the City Manager’s designee may notify the property owner in writing of the determination of presumed abandonment of the active operation. Pursuant to Chapter 17.30 of this title, the property owner may appeal the determination to the planning commission, which may overturn the determination only upon making a finding that the evidence supports the property owner’s position that the nonconforming use was not discontinued for a period of 90 consecutive days or more. The property owner shall be notified by the city of the termination of the deemed approved status and shall be informed of the property owner’s right to appeal the City’s decision to the planning commission.


Upon the City’s receipt of a complaint from the public, police department, city official or any other interested person that a deemed approved use is in violation of the performance standards set forth in this chapter, the following procedure shall be followed:

A. An enforcement officer shall assess the nature of the complaint and its validity by conducting an on-site observation and inspection of the premises to assess the activity’s compliance with performance standards.

B. If the enforcement officer determines that the deemed approved activity is in violation of the performance standards, the enforcement officer shall give written notice of the violation to the owner and/or operator of the establishment and seek to remedy the violation under the city’s administrative citation procedures contained in Chapter 1.14 of this code. If, however, the enforcement officer, in his or her sole discretion, determines that the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action, he or she may in lieu of following the administrative citation procedure, refer the matter directly to the planning commission for a hearing at which the deemed approved activity’s deemed approved status may be suspended, modified or revoked.

C. Any administrative citation issued under this section shall be issued, processed, and enforced in compliance with all of the provisions of Chapter 1.14 of this code, unless otherwise expressly provided by this chapter. If, the owner or operator receiving an administrative citation contests the citation and a hearing is held pursuant to Chapter 1.14, the hearing officer may, in addition to exercising all powers designated in Chapter 1.14, make a recommendation to the planning commission to suspend, modify or revoke the deemed approved activity’s deemed approved status if in the judgment of the hearing officer, based upon information then before him or her, such action is necessary to ensure compliance with this chapter. Such recommendation may include the suggestion of additional or amended reasonable conditions on the use,
including but not limited to, the conditions listed in Section 17.210.120 and
the operational standards listed in Section 17.210.100, of this chapter.

D. If a hearing is conducted on a potential violation in the manner prescribed
in Chapter 17.25, the planning commission shall determine whether the
deemed approved activity is in compliance with the performance
standards. Based on this determination, the planning commission may
suspend, modify or revoke the deemed approved activity’s deemed
approved status or impose additional or amended conditions on the use,
including but not limited to the conditions listed in Section 17.210.120, and
the operational standards listed in Section 17.210.100, of this chapter,
based on information then before it. In reaching a determination as to
whether a use has violated the performance standards, or as to the
appropriateness of suspending, modifying or revoking a deemed approved
activity’s deemed approved status, or imposing additional or amended
conditions on the use, the planning commission may consider:

1. The length of time the deemed approved activity has been out of
   compliance with the performance standards.

2. The impact of the violation of the performance standard(s) on the
   community.

3. Any information regarding the owner of the deemed approved
   activity’s efforts to remedy the violation of the performance
   standard(s).

E. “Efforts to Remedy” shall include, but are not limited to:

1. Timely calls to the police department that are placed by the owner
   and/or operator of the deemed approved activity, his or her
   employees, or agents.

2. Requesting that those persons engaging in activities causing
   violations of the performance standard(s) cease those activities,
   unless the owner of the deemed approved activity, or his or her
   employees or agents feels that their personal safety would be
   threatened in making that request.

3. Making improvements to the deemed approved activity’s property
   or operations, including but not limited to the installation of lighting
   sufficient to illuminate the area within the use’s property line, the
   installation of security cameras, clear unobstructed windows, clean
   sidewalks and graffiti abated within three days.

F. If in the judgment of the planning commission, the operations of the owner
   or operator of the deemed approved activity constitute a nuisance, the
   owner is unable or unwilling to abate the nuisance and the nuisance is
   shown to be a threat to the public health and safety of the surrounding
neighborhood, the planning commission may suspend, modify or revoke the activity’s deemed approved status. Any continued operation of the business shall require a conditional use permit approved by the planning commission. All determinations, decisions, and conditions made or imposed regarding the use of a deemed approved activity shall run with the land.

G. The decision of the planning commission shall be final and conclusive, unless appealed in accordance with the provisions of Chapter 17.30 of this title.

17.210.270 Appeal from suspension, modification or revocation of deemed approved status.

Any applicant or other person aggrieved by a decision of the planning commission from a suspension, modification or revocation of an establishment’s deemed approved status pursuant to this chapter may appeal the decision to the city council pursuant to Chapter 17.30 of this code.


A. Any person violating any of the provisions of this chapter or who causes or permits another person to violate any provision of this chapter may be charged with either an infraction or a misdemeanor, and shall be subject to the provisions of the general penalty clause as set forth in Section 1.24.010 of this code.

B. In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provisions of these regulations shall be and is declared to be a public nuisance and may be abated as such by the City.

C. Nothing in this chapter shall be construed to prevent the city of El Cajon from pursuing any and all other legal remedies that may be available, including but not limited to civil actions filed by the city attorney seeking any and all appropriate relief such as civil injunctions and penalties.

D. Notwithstanding Chapter 1.24 General Penalty, Chapter 1.16 Nuisance, Chapter 1.14 Administrative Citation Procedures, or any other section of this code to the contrary, any person, entity, or organization that violates the provisions of this chapter may be subject to civil penalties up to $2,500 for each day said violation is in existence.

E. Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of these regulations is committed, continued, permitted, or caused by such violator and shall be punishable accordingly.
G. In addition to the punishment provided by law a violator is liable for such costs expenses and disbursements paid or incurred by the City or any of its contractors in correction, abatement and prosecution of the violation. Re-inspection fees to ascertain compliance with previously noticed or cited violations shall be charged against the owner of the establishment conducting the deemed approved activity or owner of the property where the establishment is located. The enforcement officer shall give the owner or other responsible party of such affected premises a written notice showing the itemized cost of such chargeable service and requesting payment thereof. Should the bill not be paid in the required time, the charges shall be placed as a lien against the property.

17.210.290 Annual alcohol sales regulatory fee.

A. The intent and purpose of this section is to impose a regulatory fee upon all off-sale alcohol establishments that either hold deemed approved status pursuant to this chapter or obtained a conditional use permit after [insert effective date]. This fee shall provide for the enforcement and regulation of the conditions of approval, operational standards, performance standards and other applicable regulations set forth in this chapter with regard to off-sale alcohol establishments.

B. The annual alcohol sales regulatory fee shall be established by resolution of the city council. The fee shall be calculated so as to recover the total cost of both administration and enforcement of the performance standards and other applicable regulations set forth under this chapter upon all off-sale alcohol establishments that either hold deemed approved status pursuant to this chapter or obtained a conditional use permit after the [insert effective date], including, for example, notifying establishments of their deemed approved status, administering the program, establishment inspection and compliance checks, documentation of violations, conducting hearings and prosecution of violators, but shall not exceed the cost of the total program. All fees shall be used to fund the program. Fees are nonrefundable except as may be required by law.


If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more of the sections subsections, sentences, clauses or phrases may be declared invalid.

SECTION 4. This ordinance shall become effective thirty (30) days following its passage and adoption.
SUMMARY OF PUBLIC HEALTH FINDINGS

Public Health Effects

The staff researched public health studies to gain as much information possible on the potential affects created by off-sale outlets on communities. Staff investigated an ongoing program under the direction of the Center for Disease Control (CDC) titled “Community Preventative Services Task Force.” The Task Force is an independent, nonfederal, uncompensated body of public health and prevention experts, whose members are appointed by the Director of the CDC. In 2007, the Task Force studied the effectiveness of interventions aimed at preventing excessive alcohol consumption and related harms (The Effectiveness of Limiting Alcohol Outlet Density as a Means of Reducing Excessive Alcohol Consumption and Alcohol-Related Harms, 2007) Related harms are defined as vandalism, public nuisance, domestic violence, etc. Basically, the Task Force reviewed 30 qualifying studies of which several types of studies were found that consistently indicated that alcoholic beverage outlet density and policy changes that affect alcohol outlet density were associated with excessive alcohol consumption and related harms.

In assessing the effects of outlet density on alcohol-related harms, primary evidence was used from existing studies of outlet density; studies of the privatization of alcohol sales, alcohol bans, and changes in license arrangements—all of which affected outlet density. Most of the studies found that greater outlet density is associated with increased alcohol consumption and related harms, including medical harms, injury, crime, and violence.

In summary, the Task Force found that the regulation of alcohol outlet density may be a useful public health tool for the reduction of excessive alcohol consumption and related harms. Furthermore, the information contained in the Task Force findings supports the need to regulate alcohol outlets by size, clustering (separation distance), location (sensitive land uses), neighboring factors (crime-rate), type and number of outlets and with the application of performance standards that curb or eliminate illegal activities, which compound related harms.
NOTICE OF PUBLIC HEARING

The El Cajon Planning Commission will hold a public hearing at 7:00 p.m., Monday, July 8, 2013 in Council Chambers, 200 Civic Center Way, El Cajon, CA, for the following items:

AMENDMENT TO TITLE 17 (ZONING CODE) ALCOHOL SALES LAND USE ORDINANCE. The Planning Commission will be presented with a draft Alcohol Sales and Deemed Approved Alcohol Sales Regulations Ordinance, which is structured to require land use permits for newly established alcoholic beverage sales activities, confers deemed approved status for legal nonconforming existing off-sale alcoholic beverage sales activities and provides standards and a hearing process to review violations of those standards in order to protect the general health, safety, and welfare of the residents of the city of El Cajon and to prevent nuisance activities where alcoholic beverage sales occur. Public input is encouraged and welcomed. The draft ordinance is available at http://www.ci.el-cajon.ca.us/dept/comm/planning.html, and at the Planning Division located at 200 Civic Center Way, El Cajon, CA. Comments may be sent to Anthony Shute, Planning Division, 200 Civic Center Way, El Cajon, CA 92020, or via email at tonys@cityofelcajon.us. Comments may also be presented at the Planning Commission meeting, in writing or verbally during the public hearing. Public comments will be considered as part of the development of the draft alcohol ordinance.

The City of El Cajon is endeavoring to be in total compliance with the Americans With Disabilities Act. If you require assistance or auxiliary aids in order to participate at the Planning Commission meeting, please contact the Planning Division at (619) 441-1742 as far in advance of the meeting as possible.

In case of a court challenge, you may be limited to those issues raised at the public hearing, or in written correspondence to the Commission, described in this notice. This item also requires subsequent review and approval by the City Council.

Manjeet RANU, AICP
Planning Manager
Community Development

DATE: July 8, 2013

City of El Cajon
Planning Division
Fax: (619) 441-1743
Ph: (619) 441-1742
AGENDA ITEM NO. 2

SUBJECT: ALCOHOL SALES LAND USE ORDINANCE – AMENDMENT OF ZONING CODE NO. 424

The Planning Commission will be presented with the City Council’s direction, background information, project schedule, proposed ordinance structure and opportunities for community input regarding off-sale alcohol outlets and their associated effects. This is an information item only. Public testimony may be given, but the Planning Commission will not take action at this meeting.

Location: Citywide
Applicant: City of El Cajon
Project Planner: Anthony Shute / 619-441-1742
Email: tonys@cityofelcajon.us

RECOMMENDED ACTION:

1. Receive staff presentation;
2. Take public comment; and
3. Provide any initial feedback to staff.

SUMMARY

The City Council has concerns regarding the performance of off-sale alcohol outlets, including the social effects and economic impacts to adjacent businesses from the sale and consumption of alcohol. On February 26, 2013, the City Council was presented with detailed information regarding these outlets. After discussing the information and hearing public testimony, the City Council directed City staff to:

1. Develop land use regulations for new off-sale establishments, including location restrictions, signage, visibility, hours of operation, etc.; and
2. Create a deemed approved ordinance status to apply to existing off-sale outlets, including the provisions for fines and penalties for noncompliance, and due process; and
3. Implementation and enforcement procedures

The purpose of this staff communication is to inform the Planning Commission of the Council's direction, provide the associated background information, present the project schedule, explain the proposed ordinance framework and detail the opportunities for community input. The Planning Commission is encouraged to ask questions and provide feedback. Staff will then return to the Commission with a proposed working draft ordinance at its June 10, 2013 regular meeting.

BACKGROUND

On January 22, 2013, the City Council identified their interest in addressing the performance of off-sale alcohol outlets. Their intent was based on eliminating the social effects and economic impacts to adjacent businesses from the sale and consumption of alcohol (underage sales, serial inebriates, crime and other public nuisances). Off-sale means a Type-20 (Beer and Wine) and Type-21 (Liquor) sold from a retailer to be consumed at an "off-site" location. This typically means liquor stores, convenience markets (7-11, local proprietors), gas stations, grocery stores (Albertsons, Ralphs, Vons), pharmacy retailers (CVS, Walgreens), and big box retailers (Target, Wal-Mart). However, the initial focus of the Council was on small markets. At the same public hearing, the Council directed staff to provide an analysis of the issue, with comprehensive options and the pros and cons of adopting an alcohol off-sale strategy based on qualitative and quantitative research.

On February 26, 2013, the City Council was presented with detailed information regarding off-sale alcohol outlets and their associated effects, crime statistics, governing City regulations and policies, project goals, alternatives, and legal considerations. The Council then adopted Resolution No. 16-13 directing the Planning Commission to hold hearings and consider amendments to the Zoning Code regarding “Alcohol Vendors” and to create a “deemed approved” ordinance. The same information will be presented to the Planning Commission. A copy of the City Council’s agenda report (Alcohol Sales Land Use Study Session, dated 02-26-13) and City Council Resolution No. 16-13 are attached for reference. The Council is expecting clear detailed standards by which alcohol outlets must perform while protecting the public health, safety and general welfare. Concurrently, the City Council put small alcohol vendors (markets) on notice that while these regulations are being considered, they have an opportunity to voluntarily police themselves.

City staff is researching the potential legal ramifications and consistency with state and federal laws, cost to implement this policy, crime statistics, other jurisdictions’ approach and associated public health studies. The end result is expected to produce an ordinance
that meets the Council’s intent, in compliance with legal regulations, collaborative, transparent and enforceable.

**DISCUSSION**

The Planning Commission is requested to review the attached City Council agenda report, receive the associated background information presented by staff, and provide feedback along with any other options, consistent with the general direction given by the City Council on February 26, 2013. The Commission will not take any action on this item at this meeting.

A subsequent Planning Commission work session is scheduled for June 10, 2013, where the Planning Commission will be presented with a proposed working draft ordinance. The purpose of the June meeting will be to engage the Commission’s input and direction. Furthermore, a public review period of two weeks will be allocated to gain stakeholder input on the proposed draft. A second public hearing will be scheduled for July 8, 2013 for the Commission to refine the proposed draft ordinance. It is expected that the Commission will be able to forward its recommendation to the City Council at this meeting.

**COMMUNITY OUTREACH**

To date, City staff has met with the Neighborhood Market Association, Communities Against Substance Abuse and the Institute for Public Strategies on this issue. Moreover, the Planning Division sent a courtesy notice of this public hearing communication item to those same stakeholders, individuals who spoke on this issue at the City Council meeting on February 26, and to each off-sale alcohol outlet establishment ownership and manager.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The staff communication item is exempt from CEQA because no discretionary action is being taken at this public hearing.

**ATTACHMENTS**

1. City Council Resolution No. 16-13 (Intention to Initiate)
2. City Council Excerpt Minutes dated 02-26-13
3. City Council Agenda Report with attachments dated 02-26-13
RESOLUTION NO. 16-13

A RESOLUTION OF INTENTION TO INITIATE AN AMENDMENT TO TITLE 17 OF THE EL CAJON MUNICIPAL CODE FOR THE PURPOSE OF ADOPTING REGULATIONS PERTAINING TO THE OPERATION OF ALCOHOL SALES BY BOTH BUSINESSES HAVING LEGALLY ESTABLISHED CONFORMING STATUS AND BUSINESSES HAVING NON-CONFORMING USE STATUS.

WHEREAS, on January 22, 2013, and February 26, 2013, the City Council heard testimony from the public requesting amendments to the City’s regulations for allowing the establishment of locations of businesses holding licenses to sell and distribute alcohol products, which currently apply to off-sale businesses (the “Alcohol Vendors”) whether or not subject to the conditional use process, but which are inapplicable to Alcohol Vendors having legal, non-conforming use status; and

WHEREAS, the City experiences public nuisance issues, such as urinating in public, petty theft, panhandling and drunkenness in public in close proximity to off-sale outlet locations; and

WHEREAS, 48% of non-DUI alcohol-related arrests, occurred within 600 feet of off-sale outlets under 15,000 square feet in size for the years 2009 through 2012; and

WHEREAS, for the calendar year 2012, the City experienced a 5% increase in non-DUI alcohol-related arrests from the previous year; and

WHEREAS, the problems associated with the off-sale of alcohol negatively impact the City’s quality of life and business community, and disproportionately demand City services; and

WHEREAS, the City Council desires to reduce the problems associated with the off-sale of alcohol and has determined that local control through land use regulatory authority is necessary to ensure public health, safety and welfare by addressing the effects and impacts to the community; and

WHEREAS, the City Council has an interest in modifying the City’s land use regulations to (1) adopt a legally enforceable method to apply existing and future standards to Alcohol Vendors having legal non-conforming use rights by creating a “deemed approved” status to these Alcohol Vendors as if they were previously granted a conditional use permit by the City, and (2) to apply new standards to all Alcohol Vendors (both those possessing a conditional use permit and those having a “deemed approved” status); and (3) apply new standards to future Alcohol Vendors; and

WHEREAS, amendments are needed in Title 17 (Zoning Code) of the Municipal Code to accommodate this change and pursuant to Municipal Code Section 17.20.020 amendments to Title 17 can be initiated by adoption of a resolution of intention by the City Council or the Planning Commission.

(Continued on Page 2)
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. That the El Cajon City Council hereby directs the Planning Commission to hold a public hearing to consider amendments to Title 17 of the Municipal Code adding new regulations for Alcohol Vendors and to create a "deemed approved" ordinance applicable to Alcohol Vendors having legal, non-conforming use status, and new standards applicable to existing Alcohol Vendors and future Alcohol Vendors, as well as procedures for enforcement of all Alcohol Vendors throughout the City of El Cajon.

2. That the scope of work for this amendment is to be generally consistent with the Comprehensive and Programmatic alternative described in the companion staff report dated February 26, 2013.

3. That staff concurrently conduct stakeholder outreach and consider the input given in preparing amendments to Title 17 applicable to Alcohol Vendors.

PASSED AND ADOPTED by the City Council of the City of El Cajon, California at an Adjourned Regular Joint City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting held this 26th day of February, 2013, by the following vote to wit:

AYES: Lewis, Ambrose, Kendrick, McClellan, Wells
NOES: None
ABSENT: None
DISQUALIFY: None

MARK LEWIS
Mayor of the City of El Cajon

ATTEST:

KATHIE J. RUTLEDGE
City Clerk

I hereby certify that the above and foregoing is a full and true copy of Resolution No. 16-13 of the Resolutions of the City of El Cajon, California, as adopted by the City Council at the Adjourned Regular Joint Meeting of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency on the 26th day of February, 2013.

Kathie J. Rutledge, CMC, City Clerk

2/26/13 (Item 4.1)
EXCERPTS FROM CITY COUNCIL
AND
HOUSING AUTHORITY MEETING MINUTES
February 26, 2013

AGENDA CHANGES:

MOTION BY LEWIS, SECOND BY MCCLELLAN, to MOVE Items 7.2 and 4.1 to the beginning of the Agenda, before Consent Items.

MOTION CARRIES BY UNANIMOUS VOTE.

4.1 ALCOHOL SALES LAND USE STUDY SESSION
(Report: Planning Manager)

RECOMMENDATION: That the City Council:
• Receive comments from the public;
• Discuss the subject matter in this report;

THEN
• Move to adopt the next RESOLUTION in order APPROVING a Resolution of Intention to amend Title 17 (Zoning Code) of the El Cajon Municipal Code;

OR
• Move to provide policy direction to staff.

DISCUSSION

City Manager Williford outlines the presentation to be given by Staff and advises there are two halves to the issue; the first, as raised by Councilmember Kendrick earlier, the so-called "deemed approved" or "deemed approved type ordinance", primarily for the purpose as used in the State of California, of looking back to alcohol outlets that do not currently have a CUP (Conditional Use Permit) or similar permits, and putting them under some form of regulation. The other half is what to do, and how to address, new alcohol sales requests for the future. He asks Council to keep these considerations in mind as discussion proceeds.

Police Chief Redman begins the slide presentation and speaks about community forums and the number one issue: Public nuisance crimes.

Planning Manager Manjeet Ranu continues the presentation discussing Type 20 and Type 21 alcohol licenses.
ITEM 4.1 (Continued)

City Attorney Foley reviews legal considerations mentioned in the Agenda Report.

Discussion ensues among Council and Staff concerning problems with the homeless and public drunkenness, the effect on people considering whether or not to invest in the City, and the increasing number of complaints received from business owners.

Councilmember Kendrick states he is open to hearing from the public and does not want to put anyone out of business. He summarizes the options for consideration by Council.

Prior to calling forward speakers on this Item, Mayor Lewis encourages the public to indicate if they feel the same as any previous speaker.

Speakers in support of the proposed ordinance:

Dana Stevens, Communities Against Substance Abuse (CASA) (slide presentation)
Richard Preuss
Rob Hall
Lorenzo Higley, CASA
Lorraine Gonzalez
LaVonna Connelly, El Cajon Collaborative
Harold Brown, East County Transitional Living Center (ECTLC)
Steven True, supervisor for the Clean & Safe Program
Michael Wickman
Katherine Webb
Helen Ripple

The following speakers supported working together with the City to come up with solutions to help solve the problems, prior to adopting an ordinance.

Amad Atisha

Recess called at 5:27 p.m.
Meeting called back to order at 5:33 p.m.

Mayor Lewis informs this meeting will go on until 6:00 p.m., and there will be an effort to fit in Public Comment before that time. If Item 4.1 goes on, it will be continued to the 7:00 p.m. meeting.
ITEM 4.1 (Continued)

(Continuation of speakers in support of working together with the City on solutions to the problems)

Mark Arabo, Neighborhood Market Association (submits a handout to Council)
Martin Samo
Freddie Garmo

Councilmembers McClellan and Kendrick comment and pose questions to the speakers who made reference to the task force formed two years ago, under the guidance of Jillian Hanson-Cox.

Mayor Lewis announces the continuation of Item 4.1 to the 7:00 p.m. meeting, and suggests proceeding with Public Comment.

(See PUBLIC COMMENT 3:00 P.M. listed with the 7:00 P.M. meeting)
ITEM 4.1 Continued AFTER 3:00 P.M. Meeting Public Comment time)

Chris Morris, Attorney, submits a petition signed by 1,500 residents and customers in the City of El Cajon, in opposition to any ordinance that would prohibit and affect these store owners.

Ninus Malan submits a handout to Council containing suggestions for a compliance program.

Daryl R. Priest speaks in support of the deemed approved ordinance and feels that it is time to do something about these problems.

Councilmember Kendrickpolls Councilmembers and discussion continues on the following suggestions:

- Developing a hybrid deemed approved ordinance;
- Creating a taskforce to see what would work within the City to address the issues;
- A caution against legislating too quickly and to come back with a reasoned approach;
- A suggestion to ban the sale of small bottles of alcohol.

City Attorney Foley advises that citywide bans may not be within authority of Council, however, it could be part of a nuisance abatement procedure. If a deemed approved ordinance goes forward, Staff could come back with an enforcement procedure.
ITEM 4.1 (Continued)

In response to questions from Council, City Manager Williford indicates it may take a couple of months before this Item comes back to Council, after the Planning Commission hearing.

Councilmember Kendrick supports giving the retailers three months to stop selling to the homeless and drunks, and he suggests that Mr. Arabo work on influencing the alcohol retailers in town to help solve part of the problem. He proposes sending the Item forward to the Planning Commission for thorough vetting, with substantial input from the Neighborhood Market Association, to start the process of crafting a deemed approved ordinance, and have Staff meet with Neighborhood Market Association in the next two weeks. He comments that if enough progress is made, and a deemed appropriate ordinance becomes necessary, it may not need to be quite so onerous.

Councilmember Ambrose suggests that the Neighborhood Market Association come forward with some ideas and work with Staff to proffer their own concept on how this would work for store owners and Association members. He also suggests that store owners submit their own ideas to the attention of the City Manager.

Councilmember McClellan agrees with the suggestions mentioned by Councilmember Kendrick, and feels that a strong message will be sent that people need to take strong responsibility for their businesses. He suggests that residents, members of the business community, and the Clean and Safe Program monitor the progress of these efforts.

MOTION BY KENDRICK to MOVE the Item forward to the Planning Commission and to have Staff consult with the Neighborhood Market Association before the meeting.

Councilmember Kendrick confers with City Attorney Foley, and the motion is restated as follows:

MOTION BY KENDRICK, SECOND BY MCCLELLAN, to ADOPT Resolution No. 16-13, a Resolution of Intention to ask the Planning Commission to proceed with the deemed approved ordinance, at the City Manager’s discretion to determine when to bring it to the Planning Commission, to start it moving forward to come back to Council if necessary.

MOTION CARRIES BY UNANIMOUS VOTE.
PUBLIC COMMENT 3:00 P.M.:

City Clerk Rutledge reads the names of those who submitted speaker cards for Public Comment. No one comes forward to speak.

In response to questions from Councilmember Kendrick, City Attorney Foley advises the remaining Agenda items can be rearranged at the 7:00 p.m. meeting so that Item 4.1 is heard prior to the scheduled evening items, and the remaining afternoon agenda items.

Mayor Pro Tem Wells suggests continuing the discussion on Item 4.1 at this time, and Council concurs.

PUBLIC COMMENT 7:00 P.M.:

Mayor Lewis reads a fact from 100 years ago concerning two ordinances passed in the City of El Cajon, and speaks about the upcoming Farmers’ Market.
TO: Mayor Lewis, Mayor Pro Tem Wells, Councilmembers Ambrose, Kendrick, McClellan

FROM: Manjeet Ranu, Planning Manager

SUBJECT: Alcohol Sales Land Use Study Session

RECOMMENDATION: That the City Council:

- Receive comments from the public;
- Discuss the subject matter in this report;

THEN

- Move to ADOPT the next RESOLUTION in order APPROVING a Resolution of Intention to amend Title 17 (Zoning Code) of the El Cajon Municipal Code;

OR

- Move to provide policy direction to staff.

1. SUMMARY

At its January 22, 2013, public meeting, the City Council directed staff to research and report back to the Council options for addressing problems associated with the off-sale of alcohol (beer, wine and liquor stores). This agenda item describes the issue, suggests goals for the City to achieve, and outlines alternatives for how to achieve these goals. It involves separate yet related approaches to both existing and future off-sale outlets. The City Council is requested to provide staff direction for either initiating ordinance amendments or other policy direction. Since most of the alternatives would require an amendment to the City’s Zoning Code, a Resolution of Intention has been docketed for Council’s consideration. The resolution will include a scope of work reflecting the direction of the City Council, should it decide to take this step.
2. ISSUE

Introduction
Negative impacts on the community and businesses, along with disproportionate demands on City services, are associated with the off-sale of alcohol.

Public Nuisances
The Police Department hosts community forums throughout the year. Over the last several years, community concerns focused on quality of life issues. Of these, chronic alcoholic homeless and related public nuisance issues rank high.

The Police Department routinely receives public nuisance calls for service on issues such as:

- Urinating in public
- Petty theft
- Panhandling
- Drunk in public

Crime
The chronic alcoholic homeless population almost exclusively commits the below-listed alcohol-related arrests. These arrests usually follow a community complaint received by the Police Department’s communications center. While the population of chronic alcoholic homeless can vary in size, the alcohol-related offenses they commit are prevalent and highly visible.

<table>
<thead>
<tr>
<th>Percentage of arrests that are alcohol-related (excluding DUls)</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>8.3%</td>
<td>13.2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Alcohol-related Arrests in 2012 by Type</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Drunk in public</td>
<td>500</td>
</tr>
<tr>
<td>Drinking in public</td>
<td>88</td>
</tr>
<tr>
<td>Open container on premises</td>
<td>40</td>
</tr>
<tr>
<td>Total arrests</td>
<td>628</td>
</tr>
</tbody>
</table>

The number of alcohol-related arrests is disproportionately high in relation to the location of off-sale alcohol outlets.

<table>
<thead>
<tr>
<th>2009 – 2012 Reporting Period Statistics</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol-related arrests (excluding DUls) within 600 feet of an off-sale alcohol outlet of less than 15,000 square feet in size</td>
<td>849 arrests</td>
<td>48%</td>
</tr>
</tbody>
</table>
2009 – 2012 Reporting Period Statistics

<table>
<thead>
<tr>
<th>Area of City within 600 feet of an off-sale alcohol outlet of less than 15,000 square feet in size</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol-related arrests (excluding DUIs) within Census tracts with an overconcentration (per State ABC regulations) of off-sale alcohol outlets</td>
<td>1,229 arrests</td>
<td>70%</td>
</tr>
<tr>
<td>Alcohol-related arrests (excluding DUIs) within High and Very High crime reporting districts</td>
<td>1,207 arrests</td>
<td>69%</td>
</tr>
</tbody>
</table>

Officers are required to drive the prisoner to downtown San Diego and be booked into jail. This is a very time consuming process and taxing on City resources.

**Economic Impacts**

The presence of nuisance and criminal activities has many negative impacts. These impacts affect the economic strength of the City. It depresses business retention and recruitment in impacted areas. A portion of the potential customer base avoids impacted areas. It also negatively affects the City’s overall image and puts the City at a competitive disadvantage.

3. **BACKGROUND**

**Off-sale Alcohol Land Uses in the City**

<table>
<thead>
<tr>
<th></th>
<th>Outlet Under 15,000 square feet</th>
<th>Outlet 15,000 square feet and larger</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type 20 license</td>
<td>35</td>
<td>6</td>
<td>41</td>
</tr>
<tr>
<td>(beer and wine sales)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type 21 license</td>
<td>24</td>
<td>14</td>
<td>38</td>
</tr>
<tr>
<td>(liquor)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total outlets</td>
<td>59</td>
<td>20</td>
<td>79</td>
</tr>
</tbody>
</table>

Seventy-five percent of these off-sale outlets are legally non-conforming, pursuant to El Cajon Municipal Code Chapter 17.210, which regulates alcohol sales as a land use. These outlets were established prior to amendments to the Zoning Code for off-sale alcohol land use standards. All of these operate in buildings under 15,000 square feet in size. While 18 of these outlets operate under a Conditional Use Permit, the outlets are non-conforming as to distance standards from specified sensitive land uses.

Alcohol is available at restaurants, grocery and drug stores, liquor stores, convenience stores, neighborhood markets, bars, social clubs, and gas stations. There are 138 licensed on- and off-sale locations in the City, representing one alcohol outlet for every 725 residents.
State Alcoholic Beverage Control “Moratorium”
The state Department of Alcoholic Beverage Control has placed the City in a “moratorium” status because the number of Type 20 licenses exceeds a rate of one license per 2,500 residents citywide. Technically, the City exceeds the maximum number of Type 20 licenses by only one license. However, since the location of the vast majority of these licenses is within the core valley area of the City, the practical concentration of liquor sales within this portion of the City is far more than the overall citywide ratio would suggest. As the population of the City grows, which it is forecast to do, or if a license is cancelled or transferred out of the City, El Cajon may be removed from the moratorium list when it is next updated. The moratorium does not prevent new Type 20 outlets from operating in the City. Rather, the ABC requires the City to make a finding of Public Convenience and Necessity for a new Type 20 license to be granted.

Regulation of Alcohol Sales Land Uses in Municipal Code – Past and Present
Before 1988, the Zoning Code did not require a CUP for the off-sale of alcoholic beverages. Off-sale of alcoholic beverages was a permitted land use in the Neighborhood Commercial (C-N), General Commercial (C-G) and Regional Commercial (C-R) zoning districts.

In 1988, the Zoning Code was amended to define liquor stores and to require a CUP for new Type 21 liquor outlets. No operational use and development standards specific to off-sale land uses were included in this amendment.

In 1992, the Zoning Code was amended to require a CUP for Type 20 outlets. The higher level of review was imposed to establish consistency for the off-sale of alcohol and ensure compatibility with adjacent uses. Still, there were no operational use standards in the Zoning Code specific to off-sale.

In 1994, the Zoning Code was amended to require a CUP for all alcohol beverage establishments, including on-sale and nine issues to consider in whether to approve a CUP for an on- and off-sale alcohol business. The considerations deal with crime, other land uses in the area, concentration of alcohol outlets and similar topics, but are generally qualitative in nature. Again, no operational use standards specific to off-sale were included in the Zoning Code.

In 1995, the Zoning Code was amended to specifically exempt a grocery store or drug store greater than 15,000 square feet from the CUP requirement and the newly added distance requirements. The minimum separation requirements pertained to new on-sale establishments, except restaurants with bar areas less than eating areas, to existing on-sale establishments, off-sale outlets, and certain sensitive land uses, such as housing and schools. For new off-sale outlets, the CUP requirement and the separation
requirements only applied to outlets operating out of buildings less than 15,000 square feet in size. Type 21 outlets operating as the principal use regardless of size and as an accessory use exceeding 10 percent of the principal use. The separation requirements prevented new small establishments from locating in most areas of the City. New, small off-sale alcohol outlets could only locate in a few areas near the Westfield Parkway mall.

In 2010, the Zoning Code was comprehensively reorganized. As part of that reorganization, there were numerous incremental changes to the code. One of those changes removed the requirement for Type 20 off-sale alcohol outlets operating out of buildings less than 15,000 square feet in size to meet the separation requirements, provided that the amount of floor area devoted to beer and wine sales did not exceed 10 percent, subject to approval of a CUP. Standalone Type 21 stores, regardless of size, still require a CUP in retail-oriented commercial zoning districts and are subject to the separation requirements. Off-sale of alcohol is prohibited in Specific Plan No. 182 (downtown).

Since the 2010 Zoning Code amendment, four applicants willing to limit beer and wine sales to 10 percent or less of the store have sought CUPs for small Type 20 outlets. Staff’s recommendation has been to deny all of these applications. However, a separate set of operating conditions were recommended by staff, should the Planning Commission or City Council choose to approve the CUP. Notable of these conditions was a recommendation that the applicant purchase two off-sale licenses from high crime areas in over-concentrated Census tracts of the City, cancel one and transfer the other license to the new outlet. Staff’s recommended conditions have not been codified or comprehensively addressed by the City Council. Rather, the conditions were considered with each individual application.

Three small Type 20 outlet CUPs have been approved since the 2010 Zoning Code amendment: On-the-Go, located at the northwest corner North Second Street and East Madison Avenue, in 2010; Ramco, located at the western end of Fletcher Parkway, in 2011; and 7-11, located at Chase and Avocado Avenues, in 2012. A two-for-one license transfer condition was imposed on On-the-Go and Ramco. Neither business has begun alcohol sales. A one-for-one license requirement was imposed on 7-11, which is in the process of transferring a license to begin selling beer and wine. From 1995 through 2012, no new small alcohol outlets opened in the City. New Type 20 and 21 licenses were only successfully obtained by larger establishments during that period. The recently approved 7-11 is anticipated to open with Type 20 off-sale in 2013.

Administrative Alcohol Land Use Policy
In 2010, staff prepared and put into practice an administrative policy to guide how state ABC referrals for a Public Convenience and Necessity finding would be addressed when the off-sale land use does not trigger the requirement for a CUP — outlets 15,000
square feet and larger. This administrative policy applies to Type 20 and Type 21 license requests for which the City must provide a finding of Public Convenience and Necessity for ABC to grant a license because of the Type 20 moratorium status and when a Type 21 outlet would be located in an over-concentrated census tract and/or a high crime district. This administrative policy was not adopted by the City Council, but an appeal of a staff denial of a Public Convenience and Necessity finding subjected the policy to public review—staff’s denial using this policy was ultimately upheld by the Council.

Tools Used by Other Cities and Counties
The City Attorney’s office has canvassed California cities and counties to review land use and other regulations affecting off-sale and on-sale merchants. It has been mentioned in some settings that there are approximately 20 jurisdictions in California with some sort of ordinance regulating pre-existing but nonconforming uses of this type (i.e., “deemed approved” ordinances). It is the City Attorney’s belief that besides these deemed approved ordinances most cities and counties already require some discretionary permit (e.g., a conditional use permit or special use permit) for new off-sale and on-sale merchants.

Those jurisdictions (there may be others) having land use regulations applicable to legal nonconforming uses, which were reviewed by the City Attorney, include:

- Alameda County
- City and County of San Francisco
- Lemon Grove
- Oakland
- Ontario
- Oxnard
- Pasadena
- Petaluma
- Richmond
- Rohnert Park
- San Bernardino
- Santa Cruz
- Santa Rosa
- Vallejo
- Ventura
- Walnut Creek

Of these 16 jurisdictions only one (Ontario) prohibits pre-existing, non-conforming off-sale stores from selling (1) single cans or bottles of beer or malt beverages, wine coolers, beer coolers, or pre-mixed distilled spirit cocktails (the Ontario ordinance requiring sales of such beverages to be in specified multi-unit quantities), (2) wine in bottles or containers having less than 750 ml in capacity, and (3) distilled spirits sold in bottles or containers having less than 375 ml in capacity. One other, Ventura, prohibits the sale of beer or malt beverage products in bottles or cans greater than 32 ounces in volume (excluding kegs or other containers of two gallons or more, clearly intended to dispense multiple servings). Ventura’s prohibition on high volume sales applies to both existing and new off-sale sites. At least two other jurisdictions, the cities of San Bernardino and Lemon Grove, include similar restrictions as possible conditions in the approval of the
discretionary permit for new merchants. Moreover, the city of Vista (and likely others) has adopted a city council policy wherein it recommends conditions of approval for new alcohol beverage establishments. One such recommended condition set forth by Vista’s policy is that beer, malt beverage products, wine coolers, and pre-mixed distilled spirits cocktails (if allowed by license) shall be sold only in manufacturer pre-packing multi-unit quantities.

No jurisdictions within San Diego County, with the exception of Lemon Grove, have adopted a deemed approved-type of ordinance. A review of each of the codes for the County of San Diego and its other 17 cities finds that none of the jurisdictions have ordinances that prohibit off-sale vendors from selling individual cans or bottles, excessively large cans or bottles, fortified beers or wines, or individual servings (i.e., less than 375 ml) of distilled spirits.

4. GOALS

Introduction
Based on the City Council’s general direction, staff has prepared three goals expressing what the City may wish to achieve in addressing the problems associated with off-sale alcohol outlets.

Local Control
A key goal is to have a set of tools that empower the City of El Cajon to manage off-sale alcohol outlets. Exercising land use regulatory authority enables the City to have local control over off-sale alcohol outlets. It is the most fundamental of the goals, as it empowers the City to achieve the outcomes in reducing the problems associated with off-sale alcohol outlets.

Reduction in Overall Crime
A goal to reduce overall crime links the interrelated issues of reducing the chronic alcoholic homeless population and reducing alcohol-related crime. Crime prevention is inherent in this goal. Alcohol fuels other crimes, which increases the overall crime rate.

Improved Quality of Life and Business Environment
The City seeks a high quality of life for its citizens and desires a strong business environment. An approach to achieving this goal would need to address nuisance issues associated with off-sale of alcohol.
5. ALTERNATIVES

Introduction
Based on the three goals and the City Council’s general direction, staff has identified five alternatives with policy and regulatory tools for how to achieve these goals and address the problems associated with the off-sale of alcohol. Elements of multiple alternatives may be blended. The alternatives involve separate yet related approaches to both existing off-sale outlets and future outlets. A list of potential regulations applicable to off-sale alcohol land uses is included in Attachment D.

All of the alternatives only address off-sale alcohol outlets. This is based both on the City Council’s general direction and also on the Police Department’s experience with this issue. The identified problem is most acute and chronic with off-sale, not with on-sale (i.e., bars and restaurants), since it correlates with the chronic alcoholic homeless population. Off-sale alcohol is much more accessible and attainable than on-sale.

Comprehensive and Programmatic – both existing and future outlets
In this alternative, a model Deemed Approved Ordinance would be adopted and implemented. DAO is essentially a retroactive CUP that is applied to all existing, legally nonconforming off-sale alcohol outlets. A CUP would be required for any off-sale use, regardless of store size and irrespective of operating as a principal or accessory use. Operational conditions would be uniformly applied to both existing and future off-sale outlets. Failure to abide by those conditions may result in new or modified terms of operation and potentially revocation of the CUP, which would shut down the business.

Future off-sale outlets with alcohol sales as the principal use or in stores less than 15,000 square feet in size could only be considered in areas with low to average crime rates and in Census tracts that are below the maximum allowable off-sale licenses. These available areas are generally around the periphery of the City and are very limited geographically. Essentially, this option would prohibit any future off site alcohol sales in store less than 15,000 square feet anywhere within the valley area of the City.

Alcohol sales as an accessory use in stores 15,000 square feet or larger would be considered with a CUP in all C-G, C-N and C-R zoning districts. A license fee would fund a dedicated, full-time equivalent peace officer for education and enforcement, along with funding various administrative support services for the program. This alternative is intended to address the issues associated with off-sale alcohol from multiple angles. It is also intended to bring clarity to the City’s expectations through standardization, including the circumstances under which future outlets could be approved.
Voluntary Program – existing outlets
A voluntary program was initiated in 2011, led by the Alliance for a Better Community organization. This group included representatives of the Neighborhood Market Association whose members include independent retailers, and representation from the City by a Councilmember and the Police Department. This effort began due to concerns raised by the Second Street corridor business community about the problems associated with the off-sale of alcohol. This alternative would resurrect a voluntary program administered by the off-sale alcohol outlet business owners, with support from the City. If this voluntary program does not include full participation and fails to demonstrate satisfactory results after a period of implementation, the City Council could consider a stronger regulatory approach. The voluntary program would be reviewed by the City Council prior to its implementation. This alternative is intended to encourage self-policing by existing off-sale business owners, which can be more flexible than a governmental, regulatory approach.

New Regulations Targeted Only to Specific Problems – future outlets only
This alternative targets only those specific issues that are known to create the most problems and minimize the potential occurrences of those problems in future outlets. The conditions recommended by staff for CUP applications following the 2010 Zoning Code amendment represent most of the new regulations (e.g., no externally visible outdoor advertising of alcohol sales, visibility into the store, clean site, graffiti cleanup, etc.). Additionally, the restrictiveness of regulations would be linked to the severity of crime and nuisance issues, and concentration of licenses in a given area. Future off-sale outlets with alcohol sales as the principal use or in stores less than 15,000 square feet in size could only be considered in areas with low to average crime rates and in Census tracts that are below the maximum allowable off-sale licenses. The administrative policy for a finding of Public Convenience and Necessity would be codified and structured for a ministerial decision on off-sale alcohol outlets in buildings 15,000 square feet or larger in size and for alcohol sales as an allowable accessory use. A one-for-one license transfer from within the City would be required for these eligible outlets in high crime areas and Census tracts with an overconcentration of licenses, so approval of a new off-sale outlet would not result in a net gain of licenses. The intent of this alternative is to standardize operational conditions for future off-sale outlets and designate appropriate areas of the City for new outlets.

Revert to Pre-2010 Zoning Code Amendment – future outlets only
This alternative only involves removing Subsection 17.210.060 A.2 from the Zoning Code, which enabled consideration of small Type 20 outlets with 10 percent or less of the store devoted to beer and wine sales through a CUP. Removal would end the possibility of CUPs for small Type 20 off-sale outlets anywhere in the City except near Westfield Parkway mall due to the separation requirements. Standalone liquor stores, regardless of size, would continue to be subject to a CUP and separation requirements, as is the case under current regulations, and therefore could only be located near
Westfield Parkway mall also. The intent of this alternative is a return to the regulations that succeeded in effectively ending the establishment of new small off-sale outlets from 1995 through 2012. However, Westfield has specifically indicated to staff that they are against additional off-sale outlets within the mall itself, so this option would not be consistent with the Mall's current policy.

Maintain Status Quo and Change Nothing – future outlets only
The City Council may also choose to rely upon the existing regulations in municipal code. The City would rely on ABC to police most issues involving the licensing of off-sale outlets. The intent of this alternative is to explore what it would mean for the City to maintain existing regulations and allow greater discretion in considering future small Type 20 outlets with 10 percent or less of the store devoted to beer and wine sales in any retail-oriented commercial zoning district, with the exception of SP No. 182.

6. ANALYSIS OF ALTERNATIVES

Comprehensive and Programmatic – both existing and future outlets

| Benefits: | • Effectively addresses the operations of existing and future off-sale alcohol outlets, small and large  
• Alternative most capable of achieving all the goals |
| Weaknesses: | • Requires the most administrative resources to implement  
• Very difficult to consider shutting down an operating business as a last resort |
| Fiscal impact: | • Fully burdened cost of a police officer is $194,000 annually |

Voluntary Program – existing outlets

| Benefits: | • Provides an incentive to business owners to police themselves  
• Transfers responsibility away from the City |
| Weaknesses: | • Lacks regulatory tools that the City would need to effectively step in and intervene, should voluntary compliance fail with one or more outlets  
• Does not mandate participation by every off-sale alcohol outlet  
• Does not address future off-sale outlets |
| Fiscal impact: | • No change |

New Regulations Targeted Only to Specific Problems – future outlets only

| Benefits: | • Focuses on specific problems only and efficiently directs resources accordingly  
• Targets areas of the City with the most problems and minimizes the regulatory burden on well-run businesses in areas of the City with low risk for problems |
### Weaknesses:
- Does not effectively address the operations of existing off-sale alcohol outlets, small and large
- Only moderately capable of fully achieving the goals

### Fiscal impact:
- Moderate increase in cost to fund administration and enforcement of additional regulations

### Revert to Pre-2010 Zoning Code Amendment – future outlets only

#### Benefits:
- Provides certainty that the only location for new small off-sale outlets is near Westfield Parkway mall
- Effectively limits new, small off-sale outlets

#### Weaknesses:
- Exposes the Westfield Parkway regional retail and nearby employment centers to potential increase in crime and nuisance issues; this area currently experiences average and very high crime rates
- Does not address potential future larger off-sale outlets
- Does not address existing outlets

#### Fiscal impact:
- No change

### Maintain Status Quo and Change Nothing – future outlets only

#### Benefits:
- Provides the City Council significant discretion in evaluating CUPs for small off-sale outlets devoting 10 percent or less of the store to alcohol sales throughout retail-oriented commercial areas of the City (excluding SP No. 182)
- Retains few restrictions on larger off-sale outlets

#### Weaknesses:
- Likely that none of the goals would be meaningfully achieved
- Much more difficult and costly to rely on public nuisance civil remedies to address problems
- Does not address existing outlets

#### Fiscal impact:
- No change

## 7. LEGAL CONSIDERATIONS

A “deemed approved” ordinance is a legally valid method to address public nuisances that might be created by an existing Type 20 or Type 21 license holder that has a legal non-conforming use status. This type of ordinance, when used to address specific public nuisances, and the "secondary effects," such nuisances have on surrounding properties and neighborhoods, is an example of the proper exercise of a City’s police powers to make land use decisions within its jurisdiction.

For existing retailers having legal non-conforming use status, the deemed approved ordinance would place land use restrictions on those retailers that, among other things, could prohibit nuisance activities within the premises or in close proximity thereto, including but not limited to disturbance of the peace, public drunkenness, drinking in
public, harassment of passersby, excessive littering and similar nuisance-type activities, the violation of which would allow the City to conduct proceedings to revoke or modify any legal non-conforming uses previously had by the property owner. Moreover, under a deemed approved ordinance, existing retailers who have not “operated continuously without substantial change in mode or character of operation” could have their deemed approved status revoked and be subject to the requirements of new off-sale businesses.

Accordingly, the City could prohibit a licensee who closed the business for a period greater than, for example 120 days, from re-establishing their business unless it obtained a conditional use permit and was compliant with all applicable regulations, including spatial separation requirements, reasonable conditions of use (such as hours of operation, maintenance of clean and safe operations), and other similar conditions and regulations. Revocation of deemed approved status in such instances, however, may only occur after an administrative hearing is conducted at which the property owner is afforded due process rights, and the administrative body finds that the business has not operated continuously without substantial change in mode or character of operation.

The City does not have the authority to revoke or suspend the sale of alcoholic beverages by an off-sale retailer or an on-site business; however, the revocation of land use entitlements, following proper proceedings giving the property owner proper due process of law, could result in the loss of the right to use the property for alcohol sales.

Outright banning the establishment of new off-sale businesses would be prohibited by the California Constitution and, perhaps, the Commerce Clause of the United States Constitution. Reasonable land use regulations not in conflict with these constitutional issues, however, would be allowed. For new off-sale businesses, these regulations could include spatial separation requirements (e.g., keeping them away from sensitive uses); reasonable conditions of use to prevent public nuisances, such as hours of operation, maintenance of clean and safe operations, etc.; and similar conditions and regulations. Limiting number of, or prohibiting new, off-sale retailers within a specific plan area is an appropriate exercise of the City’s police powers through land use regulations.

It is still uncertain whether complete prohibitions on the sales of specific sizes of alcoholic beverages (see, Tools Used by Other Cities and Counties, above) are within the City’s police powers. However, such prohibitions have a better chance of succeeding where they are being used to address public nuisances found to be caused by the use of property for the sale of alcoholic beverages, and the “secondary effects” such nuisances have on surrounding properties and neighborhoods.
The voluntary use of a “do not sell” list, identifying serial inebriates, is a good tool; however, the City could only make it a condition of approval for new merchants, and a condition for retaining deemed approved status for a non-conforming use, that any violation of the existing State laws (making it a misdemeanor for any person to sell or supply alcoholic beverages to “any habitual or common drunkard or to any obviously intoxicated person”) would be a reason for the revocation of a CUP or deemed approved status.

8. DISCUSSION AND DIRECTION

The City Council is requested to provide direction on its views of the problem to address, the goals to achieve and preferred approach or range of approaches in addressing this issue. With direction from the City Council on its preferred approach, staff will prepare further information and schedule this issue for additional public hearings.

9. COMMUNITY OUTREACH

At its January 22, 2013, public meeting, the City Council discussed this issue and directed staff to return to its February 26 public meeting with background information and potential approaches. A continuation of this process will require public hearings with the Planning Commission and City Council if zoning ordinance amendments are required. Separate stakeholder outreach is an additional approach that may be considered.

10. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Initiation of this amendment is not a project subject to the California Environmental Quality Act (CEQA) because it is a procedural, administrative step in the process, which only direct the Planning Commission and staff to study and prepare potential amendments to multiple titles in the El Cajon Municipal Code for future consideration.

11. ATTACHMENTS

A. Draft Resolution of Intention to Amend the Zoning Code (final resolution to reflect City Council’s direction)
B. City Council’s January 22, 2013 motion
C. City Council’s January 22, 2013 draft meeting minutes excerpt
D. List of potential regulations applicable to off-sale alcohol land uses
E. El Cajon Municipal Code Chapter 17.210 – Alcohol Sales
F. El Cajon Municipal Code Section 17.145.150 – Commercial Land Use Table
G. Administrative policy: public convenience and necessity
H. The concept of public convenience and necessity
I. Map: Location of off-sale outlets with alcohol-related arrests (excluding DUIs)
J. Map: Location of on-sale outlets
K. Map: Type 20 license concentration by Census tract
L. Map: Crime reporting districts
M. Map: Impacted areas: at or above off-sale license concentration limits and high or very high crime reporting districts
N. Map: Capacity areas: below off-sale license concentration limits and low or average crime reporting districts
O. Map: Tipping point areas - crime: below off-sale license concentration limits and high or very high crime reporting districts
P. Map: Tipping point areas - licenses: at or above off-sale license concentration limits and low or average crime reporting districts
Q. Map: C-G, C-N and C-G zoned land
R. Rate of alcohol-related arrests (excluding DUIs) per quarter mile C-G, C-N and C-R arterial roadway segments
S. Post-2010 Zoning Code amendment typical CUP conditions recommended by staff
T. California Department of Alcoholic Beverage Control 2011 Moratorium Counties/Cities
U. Reducing Community Alcohol Problems Associated with Alcohol Sales: The Case of Deemed Approved Ordinances in California, Alcohol Policy Consultations for Ventura County Behavioral Health Department, 2009
V. Liquor Stores, Bars and Nightclubs: Conditional Use Permits and Best Practices for Regulating Alcohol Sales, Meyers Nave for League of California Cities, 2011
W. Alliance for a Better Community Task Force report, 2011

PREPARED BY: Manjeet Ranu
PLANNING MANAGER

APPROVED BY: Douglas Williford
CITY MANAGER
RESOLUTION NO. ___-13

A RESOLUTION OF INTENTION TO INITIATE AN AMENDMENT
TO TITLE 17 OF THE EL CAJON MUNICIPAL CODE FOR THE
PURPOSE OF ADOPTING REGULATIONS PERTAINING TO

WHEREAS, on January 22, 2013, and February 26, 2013, the City Council heard testimony from the public regarding potential amendments to the City’s regulations for allowing the establishment of locations of businesses holding licenses to sell and distribute alcohol products, which currently apply to off-sale businesses (the “Alcohol Vendors”) either or not subject to the conditional use process, but which are inapplicable to Alcohol Vendors having legal, non-conforming use status; and

WHEREAS, the City experiences public nuisance issues, such as urinating in public, petty theft, panhandling and drunkenness in public in close proximity to off-sale outlet locations; and

WHEREAS, 48% of non-DUI alcohol-related arrests, occurred within 600 feet of off-sale outlets under 15,000 square feet in size for the years 2009 through 2012; and

WHEREAS, for the calendar year 2012, the City experienced a 5% increase in non-DUI alcohol-related arrests from the previous year; and

WHEREAS, the problems associated with the off-sale of alcohol negatively impact the City’s quality of life and business community, and disproportionately demand City services; and

WHEREAS, the City Council desires to reduce the problems associated with the off-sale of alcohol and has determined that local control through land use regulatory authority is necessary to ensure public health, safety and welfare by addressing the effects and impacts to the community; and

WHEREAS, the City Council has an interest in modifying the City’s land use regulations; and

WHEREAS, amendments are needed in Title 17 (Zoning Code) of the Municipal Code to accommodate this change and pursuant to Municipal Code Section 17.20.020,
amendments to Title 17, can be initiated by adoption of a resolution of intention by the City Council or the Planning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. That the El Cajon City Council hereby directs the Planning Commission to hold a public hearing to consider amendments to Title 17 of the Municipal Code adding new regulations throughout the City of El Cajon.

Reso of Intent – Title 17 Amendment re alcohol regulations
2/26/13 (Item ___)
City Council’s January 22, 2013 Direction to Staff

• Task:
  o Return to the City Council in six weeks with an analysis of the issue, options and pros and cons

• Motion:
  o How much police staffing is needed to make it work?
  o Want complete cost recovery
  o Ban the following
    ▪ Fortified wine
    ▪ Tiny alcohol bottles
    ▪ Single serve malt liquor
    ▪ No more new liquor stores
    ▪ No more liquor stores in SP 182 or 1,000-foot buffer
  o Severe penalties including temporary halt to sales for initial violations
  o Do sting operations
  o Penalty for selling to serial inebriates on list
  o Conduct full review of City’s liquor sale policies with focus on off sale

• Council feels that Second Street effort at self-regulation didn’t lead to desired results, so it’s “time for other shoe to drop”

• Need comprehensive overhaul of alcohol related policies and regulations

• Deal with existing and future alcohol sales outlets
9.

COUNCILMEMBER GARY KENDRICK
Heartland Communications JPA; Heartland Fire Training JPA.

9.1 Council Activities Report

REPORT AS STATED. In addition, Councilmember Kendrick adds that he met with the City Attorney on January 18th and participated in a Police ride-along on January 19th.

9.2 DEEMED APPROVED TYPE ORDINANCE – OFF-SITE SALES LIQUOR LICENSES

RECOMMENDATION: That the City Council direct staff to conduct a full review of the City's current policies and ordinances pertaining to liquor sales, focusing on off-site sales. In particular Councilmember Kendrick is recommending that staff analyze the appropriateness and potential value of the City adopting a Deemed Approved type ordinance.

DISCUSSION
Councilmember Kendrick provides a summary of a Deemed Approved Ordinance and explains he would like to address problems with off-site sales liquor licenses, including the following considerations:

- Limiting signage on liquor store windows;
- Charging a fee to enforce the ordinance similar to the tobacco ordinance for full cost recovery;
- Banning single sale malt liquor;
- Banning fortified wine with greater than 15% alcohol content;
- Banning new liquor outlets;
- Limiting liquor in SP 182 and buffer zone;
- Talking with Police Department about what personnel would be needed to make an ordinance work;
- Instituting severe penalties for non-compliance to include selling alcohol to serial inebriates;
- Conducting periodic sting operations.

Katherine Webb, resident of the City of El Cajon, speaks in support of the Deemed Approved Ordinance to help keep the City clean and free of problems.

Mayor Lewis asks City Attorney Foley whether signage regulations could be implemented for windows of liquor stores. City Attorney Foley responds that no CUPs (conditional use permits) could be revoked.

Lorraine Gonzalez speaks in support of the ordinance and provides samples of how alcohol is marketed to entice the youth.

Dana Stevens thanks the City for being proactive in moving forward to adopt an ordinance.

Councilmember Wells recalls that liquor stores were supposed to have been self-regulating, single serving sales. They complied for a while but they have all gone back to doing what they were doing previously.
ITEM 9.2 (Continued)

Councilmember McClellan feels it is time to move forward to what was promised a year ago, with regard to single serving alcohol sales.

Helen Ripple, long-term resident of El Cajon, has seen El Cajon deteriorate due to the number of liquor stores in town.

Daryl Priest speaks in support of strictly limiting liquor stores in El Cajon, particularly in the PBID (Property Business Improvement District) area.

No one else comes forward to speak.

**MOTION BY KENDRICK, SECOND BY McCLELLAN, to have the City Manager, City Attorney and Police Chief, working with CASA (Communities Against Substance Abuse), bring back findings to Council in six weeks.**

**MOTION CARRIES BY UNANIMOUS VOTE.**
Representative List of Potential Regulations – Police Example

1. The petitioner shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.

2. No wine shall be sold with an alcoholic content of greater than 15% by volume except for “Dinner Wines” which have been aged two years or more.

3. The sales of beer or malt beverages in quantities of quarts, 22oz., 24oz., 32oz., 40oz., or similar size containers are prohibited.

4. Beer, malt beverages and wine coolers in containers of 16oz. or less cannot be sold by single containers and must be sold in the manufacturer prepackaged multi-unit quantities.

5. For type 21’s include Hard Alcohol Liquor containers of 6oz. or less cannot be sold by single containers and must be sold in the manufacturer prepackaged multi-unit quantities.

6. Wine shall not be sold in bottles or containers smaller than 750 ml. and wine coolers and beer coolers must be sold in manufacture pre-packaged multi-unit quantities.

7. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

8. Not more than 15% of the square footage of the premises will be used for the display of alcoholic beverages.

9. Loitering is prohibited on or around these premises.

10. Sales of alcoholic beverages shall only be permitted between the hours of 10:00 AM and 11:00 PM.

11. A maximum of 10 percent of the retail display area may be devoted to the sale and display of alcoholic beverages limited to off-sale beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers.
Representative list of potential regulations applicable to off-sale alcohol land uses

- **Transparency**
  - Windows shall be open to view from the outside
    - Windows and entry doors shall not be blocked by signs, vending machines, shelves, racks, storage, etc.
    - No exterior advertising of alcoholic products
  - Inspection and right of entry

- **Loitering**
  - The business operator shall prevent the consumption of alcoholic beverages on-site
  - No fixtures or furnishings that encourage loitering and nuisance behavior are permitted on the premises. This includes, but is not limited to chairs, seats, stools, benches, tables, crates, etc.
  - No video or other electronic games shall be located in an off-sale alcoholic beverage establishment
  - No pay phones

- **Litter**
  - Adequate litter receptacles shall be provided on site and in the building
  - The premises shall be kept free of the accumulation of litter and shall be removed no less frequently than once each day the business is open
  - Graffiti removal required

- **Lighting**
  - Require the exterior areas of the premises and adjacent parking lots to provide sufficient lighting in a manner that provides adequate illumination for alcohol outlet patrons while not spilling onto surrounding residential and commercial properties

- **Non-nuisance standards:**
  - No littering, loitering, graffiti, drug dealing, prostitution, gambling, shootings, or other public nuisance activity in or around the premise
  - Security cameras and recording equipment required

- **Location**
  - Keep distance requirements in Section 17.210.060 and add “and to other off-sale outlets”
  - Businesses engaged in the sale or distribution of alcoholic beverages for off-site consumption shall maintain a minimum separation of 600 hundred feet from any other business required to have a conditional use permit for the sale of alcoholic beverages
• License Transfer Required
  o Off-sale outlets may be approved in underserved Census tracts with low to average crime rates with the condition that an existing Type 20 off-sale license be obtained from an over-concentrated Census tract and high to very high crime reporting district and transferred to the subject premises

• The operation of the business shall comply fully with all the rules, regulations and orders of the state Alcoholic Beverage Control Department. Failure to comply with these requirements shall constitute grounds for revocation of a conditional use permit or minor use permit

• Alcohol sale limitations
  o No wine shall be displayed, sold or given away in containers of less than seven hundred ml, except multipack containers of wine and wine coolers containing no more than six percent alcohol by volume
  o No distilled spirits shall be displayed, sold or given away in containers of less than two hundred fifty ml, except two-hundred-ml pre-mixed cocktails
  o The display, sale or distribution of fifty ml “airport bottles” and three-hundred-seventy-five ml “hip flask” containers is prohibited
  o No beer, ale or malt liquor shall be offered for sale in a container with a volume greater than thirty-two ounces. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings
  o No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window
  o No display, sale or distribution of beer or wine, wine coolers or similar alcoholic beverages shall be made from an ice tub, barrel or similar container
  o Limit sales of operation
  o No sale of tobacco or drug paraphernalia

• Display
  o All display of alcoholic beverages shall be no closer than five feet from the store entrance
• Training
  o Each off-sale operator and their employees shall complete the Responsible Beverage Service (RBS) Training component. Proof of completion shall be submitted to the Planning Division
Chapter 17.210 ALCOHOL SALES

17.210.010 Purpose.
The purpose of this chapter is to list regulations pertaining to the establishment and conduct of alcohol sales in the city under simplified headings. (Ord. 4950 § 3, 2010)

The provisions of this section shall apply to establishments for which an application or requested transaction is required to be filed with the state of California, Department of Alcoholic Beverage Control, whereby the laws of the state of California require notice thereof to be filed with the city and allow for the filing of a protest thereon by the city (except for person-to-person transfers of existing licenses, except as otherwise provided) and/or to such existing establishments, including nonconforming uses which shall cease their operation for a period of ninety or more calendar days, and thereafter there is filed any application or requested transaction with the state of California, Department of Alcoholic Beverage Control, whereby the laws of the state of California require notice thereof to be filed with the city, and allow the filing of a protest thereon by the city (including person-to-person transfer of existing license). (Ord. 4950 § 3, 2010)

With the exception of retail stores that have at least 15,000 square feet of gross floor space, and a maximum of 10 percent of the gross floor area devoted to the sales and display of alcoholic beverages, all alcoholic beverage establishments to which this Chapter is applicable shall obtain a conditional use permit pursuant to Chapter 17.50 of this title and satisfy all pertinent conditions prior to the release of the city’s protest. (Ord. 4950 § 3, 2010)

All existing on-sale and off-sale alcoholic beverage establishments for which no valid conditional use permit exists are declared nonconforming uses. (Ord. 4950 § 3, 2010)

17.210.050 Termination of conditional use permit.
Any conditional use permit issued pursuant to the provisions of this section shall be subject to the condition, in addition to any and all other conditions, that it shall terminate and cease to apply to any establishment which:

A. Shall have ceased its operation for a period of 90 or more calendar days, and
   1. If there is thereafter filed any application or requested transaction with the state of California, Department of Alcoholic Beverage Control, whereby the laws of the state of California require notice thereof to be filed with the city, and allow the filing of a protest thereon by the city (including person-to-person transfer of existing license); or
   2. Where after such 90-calendar-day period, the existing license shall have ceased to apply to such establishment; or
B. Where the existing license shall have been surrendered to the Department of Alcoholic Beverage Control for a period exceeding 180 calendar days. (Ord. 4950 § 3, 2010)
17.210.060 Distance requirements

A. No new on-sale or off-sale alcoholic beverage establishment shall be located within 600 feet of residentially zoned property, public or private schools, health care facilities, churches, parks or playgrounds, except:

1. A general retail store, or grocery store, or retail pharmacy with greater than 15,000 square feet of gross floor area and a maximum of 10 percent of the gross floor area devoted to the sale and display of off-sale alcoholic beverages;

2. A convenience market with a maximum of 10 percent of the retail display area devoted to the sale and display of alcoholic beverages; limited to off-sale beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers;

3. A restaurant with an ancillary bar with less total square footage than eating area; or

4. On-sale alcoholic beverage sales secondary and incidental to an approved, complementary, principal use within the boundaries of Specific Plan No. 182.

Said distances shall be measured between the closest property lines of the affected locations. For the purposes of this section, “secondary and incidental,” shall mean that the sales of alcoholic beverage shall be limited to not more than 25 percent of the gross annual retail receipts generated by the use on the site, which shall be calculated on a quarterly basis, for the prior 12-month period ending on the last day of the then concluding quarter of year, and shall further mean that sales of alcoholic beverages are not promoted or advertised in any signs, or the name of the business establishment.

For the purposes of this chapter, “principal use,” shall include, but is not limited to, live entertainment, participatory sporting activities, museums, theaters, hotels or motels, or other, similar uses approved by the city council, so long as the location of the sales of alcoholic beverages occurs under the same roof as the principal use, and the owner of the principal use is the owner of the liquor license.

B. No new on-sale alcoholic beverage establishment shall be located within 1,000 feet of an existing on-sale alcoholic beverage establishment and/or within 600 feet of an existing off-sale alcoholic beverage establishment, except:

1. A restaurant with an ancillary bar with less total square footage than the restaurant eating area; or

2. On-sale alcoholic beverage sales secondary and incidental to an approved, complementary, principal use within the boundaries of Specific Plan No. 182.

Said distance shall be measured between the closest property lines of the affected locations.

For the purposes of this section, “secondary and incidental,” shall mean that the sales of alcoholic beverage shall be limited to not more than 25 percent of the gross annual retail receipts generated by the use on the site, which shall be calculated on a quarterly basis, for the prior 12-month period ending on the last day of the then concluding quarter of year, and shall further mean that sales of alcoholic beverages are not promoted or advertised in any signs, or the name of the business establishment.

For the purposes of this section, “principal use,” may include, but is not limited to, live entertainment, participatory sporting activities, museums, theaters, hotels or motels, or other, similar uses approved by the city council, so long as the location of the sales of alcoholic beverages occurs under the same roof as the principal use, and the owner of the principal use is the owner of the liquor license.

(Ord. 4950 § 3, 2010)


No video or other electronic games shall be located in an alcoholic beverage establishment that obtained an original or transferred Type 21 license (liquor store) after January 1, 1996. (Ord. 4950 § 3, 2010)
Chapter 17.210 ALCOHOL SALES


No alcoholic beverage establishment which obtained an original or transferred alcohol license after January 1, 1996 shall display for sale, trade or exchange, any airline- or “shot-” size bottles of alcohol (50 milliliters or less) except in an area under the control of the seller’s employee(s). Three acceptable methods of displaying such bottles shall be:

A. In a completely enclosed cabinet or other storage device which shall be permanently affixed to a building or building structure, and which shall, at all times except during access by authorized representatives, remain securely locked;

B. In an enclosed area behind a sales or service counter which the public is not permitted to enter; or

C. In an area under the direct visual supervision of employees at all times during business hours. (Ord. 4950 § 3, 2010)

17.210.090 Considerations.

In considering the granting of a conditional use permit for any such establishment, the planning commission shall consider the following:

A. The amount of existing or proposed off-street parking facilities, and the distance of such parking facilities from the proposed establishment;

B. Hours of operation of the proposed establishment;

C. The combination of uses proposed within the proposed establishment;

D. The crime rate within the police district where the proposed establishment would be located as compared to the crime rate city- wide; provided that no permit is denied solely upon the basis of such crime rate if it does not exceed specified averages set forth by state law;

E. The total area of all window signs (painted or electric) shall not exceed 33.3 percent of the total window area of the establishment;

F. Whether there is an over-concentration of such businesses within the census tract in which the sale of alcoholic beverages is being proposed;

G. Such other considerations as in the judgment of the planning commission are necessary to assure compliance with the purpose and intent of this title. (Ord. 4968 § 71, 2011; Ord. 4950 § 3, 2010)
The following table lists uses that may be established in commercial zones. Refer to Chapter 17.115 for a general description of the land use tables provided in this title and instructions for interpreting the land use tables.

### Table 17.145.150

**Commercial Land Use Table**

<table>
<thead>
<tr>
<th>Commercial Uses</th>
<th>O-P</th>
<th>C-N</th>
<th>C-G</th>
<th>C-R</th>
<th>C-M</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult book store, adult theater, and other adult entertainment activities</td>
<td>X</td>
<td>X</td>
<td>A</td>
<td>A</td>
<td>X</td>
<td>1, 2</td>
</tr>
<tr>
<td>Aircraft sales</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Amusement parks including miniature golf, go-cart tracks, mechanized rides, etc.</td>
<td></td>
<td></td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Animal grooming services</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Antique sales</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Appliance repair; large gas and electric appliances including heating and air conditioning systems, parts and supplies</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>P</td>
<td>1</td>
</tr>
<tr>
<td>Appliance sales; large gas and electric appliances including heating and air conditioning systems, parts and supplies</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appliance sales and repair of small electrical appliances</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>1</td>
</tr>
<tr>
<td>Art galleries, commercial retail</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Artist studios and art restoration services</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Athletic clubs and fitness centers</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Auction house</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>P</td>
<td>1</td>
</tr>
<tr>
<td>Auto parts and accessories; new parts</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Auto parts and accessories; used parts, excludes dismantling</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>P</td>
<td>3</td>
</tr>
<tr>
<td>Auto rental including the rental of moving vans, trucks and trailers</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td></td>
<td>C</td>
<td>1</td>
</tr>
<tr>
<td>Activity</td>
<td>O-P</td>
<td>C-N</td>
<td>C-G</td>
<td>C-R</td>
<td>C-M</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
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<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-------</td>
</tr>
<tr>
<td>Auto sales, including: autos, motorcycles, light trucks, and recreational vehicles</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>4</td>
</tr>
<tr>
<td>Automotive body repair</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>C</td>
<td>1</td>
</tr>
<tr>
<td>Automotive service and repair</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>1</td>
</tr>
<tr>
<td>Automotive fueling station</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>5</td>
</tr>
<tr>
<td>Auto washing and detailing, full service carwash</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Auto washing, self-service carwash</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Bail bonds office</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>1</td>
</tr>
<tr>
<td>Beauty salon, nail salon, barber shop, and day spa</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>6</td>
</tr>
<tr>
<td>Beauty supply and cosmetics sales</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Billboard sign</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>7</td>
</tr>
<tr>
<td>Blood banks and blood donation facilities</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Blood plasma centers</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Boat sales including ancillary service and repair</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Book store, including news copy and magazine sales</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Bowling alley</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Camera and photographic sales and related services</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Camping facilities (overnight) including Recreational Vehicle parks</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Card room, non-gambling</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>3, 27</td>
</tr>
<tr>
<td>Carpet and drapery cleaning and repair services</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Cemetery, crematory, and mausoleum</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Child activity centers</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Circuses and carnivals</td>
<td>C</td>
<td>C</td>
<td>T</td>
<td>T</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Clothing and apparel store, new</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Clothing and costume rentals</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Clubs: youth clubs, professional organizations, union halls, fraternal organizations, and similar uses</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Cocktail lounge</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>8, 9</td>
</tr>
<tr>
<td>Contract construction services</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Convalescent home</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Convenience market</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>8</td>
</tr>
<tr>
<td>Custodial and cleaning services including property management and building maintenance with associated vehicle, equipment, and supply storage</td>
<td>O-P</td>
<td>C-N</td>
<td>C-G</td>
<td>C-R</td>
<td>C-M</td>
<td>Notes</td>
</tr>
<tr>
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<td>including large trucks and</td>
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<td>tractor-trailer rigs</td>
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<td>Hobby shop</td>
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<td>linens, kitchen supplies,</td>
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<td>etc.</td>
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<td>and eye exams</td>
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<td>Outdoor dining, accessory to</td>
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<td>Parcel delivery and postal services (office only, does not include U.S. Postal Service offices)</td>
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<td>P</td>
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<td>Pawn shop or pawn broker</td>
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<td>Pet supply stores including pet sales and pet adoption services with accessory indoor veterinary and grooming services</td>
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<td>X</td>
<td>P</td>
<td>P</td>
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<td>Photocopying and other retail office services for the general public</td>
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<td>Photographic studio including ancillary photo finishing services</td>
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<td>Plant nursery</td>
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<td>P</td>
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<td>Pool hall or billiards parlor</td>
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<td>3</td>
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<td>Prefabricated storage containers used for short term storage</td>
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<td>T</td>
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<tr>
<td>Private security company with watch dogs</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>3</td>
</tr>
<tr>
<td>Public assembly, sports related including stadiums, arenas, racetracks, etc.</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
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</tr>
<tr>
<td>Public assembly, non-sports related, including amphitheaters, drive-in theaters, concert halls, playhouses, banquet halls, etc.</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
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<tr>
<td>Recreational facility—commercial indoors, including skating rinks, radio controlled cars, lazer tag, etc.</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Recreational facility—commercial outdoors, including golf courses, driving ranges, radio controlled cars, skateboard parks, paintball facilities, etc.</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
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<td>Resource recovery center</td>
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<td>P</td>
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<td>P</td>
<td>P</td>
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<td>Seasonal outdoor businesses such as Christmas tree lots</td>
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<tr>
<td>Secondhand merchandise</td>
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<td>P</td>
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<td>1, 3</td>
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<td>Shoe sales and shoe repair</td>
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<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
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<tr>
<td>Sporting goods, bicycles, and toy stores</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Supermarket</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Surplus store</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Light Industrial Uses</td>
<td>O-P</td>
<td>C-N</td>
<td>C-G</td>
<td>C-R</td>
<td>C-M</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>--------</td>
</tr>
<tr>
<td>Contract construction services</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Direct selling organizations (baked goods, ice cream trucks, bottled water vendors, catering wagons, etc.)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Food and beverage processing</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Heavy equipment service and repair</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Laundry services, industrial, including linen, diaper, and uniform cleaning, alteration and repair services</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Light manufacturing</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Printing and publishing services, non-retail and excluding contact with the general public</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Recycling center for metal, cardboard, glass, e-waste, etc.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Scientific and commercial testing laboratories including product research and development</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Service and repair of consumer electronics</td>
<td>O-P</td>
<td>C-N</td>
<td>C-G</td>
<td>C-R</td>
<td>C-M</td>
<td>Notes</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-------</td>
</tr>
<tr>
<td>Service and repair of light machinery including vending machines, office machines, large household appliances, etc.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Service and repair of precision instruments including cameras, optical devices, medical devices and electronic testing equipment</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Warehousing and distribution</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Wholesale trade excluding explosives</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Other similar uses</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>21</td>
</tr>
</tbody>
</table>

### Transportation, Communication and Utilities

<table>
<thead>
<tr>
<th>Airports and flying fields</th>
<th>C</th>
<th>C</th>
<th>C</th>
<th>C</th>
<th>C</th>
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<tbody>
<tr>
<td>Ambulance service</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>P</td>
</tr>
<tr>
<td>Bus passenger terminals, public or private charter</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Bus parking and maintenance facility</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Heliport</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Light rail terminal</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Limousine service</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Media production including broadcasting studios, and audio and video recording studios</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Parking lots and garages, short term requiring payment of a fee</td>
<td>C</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Parking lots and garages, short term free parking</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Radio, and/or television broadcasting facilities with transmitters</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Railroad facilities, including switching stations, maintenance yards, rail freight and passenger terminals</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
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<tr>
<td>Solid waste disposal facility</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Taxi cab terminal</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Towing services with vehicle storage</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
</tr>
<tr>
<td>Towing services without vehicle storage</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>1, 3</td>
<td></td>
</tr>
<tr>
<td>Trucking terminal for motor freight including parcel delivery service terminals</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Utilities, excluding sewage treatment</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Vehicle storage facility, long term, including lots and structures</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
</tr>
<tr>
<td>Use</td>
<td>O-P</td>
<td>C-N</td>
<td>C-G</td>
<td>C-R</td>
<td>C-M</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
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<td>-----</td>
</tr>
<tr>
<td>Wireless communication facilities,</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>freestanding</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wireless communication facilities,</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>architecturally integrated or other stealth design</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other similar uses</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
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</tbody>
</table>

**Institutional and Charitable Uses**

<table>
<thead>
<tr>
<th>Use</th>
<th>O-P</th>
<th>C-N</th>
<th>C-G</th>
<th>C-R</th>
<th>C-M</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botanical garden, and arboretum</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Detention facility excluding prisons and juvenile halls</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Educational institution</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Governmental administrative offices</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Governmental operation center and service facilities</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Hospital</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Library, public</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Military base</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Museum</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>X</td>
</tr>
<tr>
<td>Non-profit welfare and charitable organizations and services</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>1</td>
</tr>
<tr>
<td>Parks, playgrounds, and amateur sports fields, public or private</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Public safety facility</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Religious facilities</td>
<td>C</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>9</td>
</tr>
<tr>
<td>Temporary feeding area</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Transition service center</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>P</td>
<td>1, 24</td>
</tr>
<tr>
<td>United States Postal Service facilities</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>25</td>
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<tr>
<td>WIC center</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Zoo</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Other similar uses</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>21</td>
</tr>
</tbody>
</table>

**Residential Uses**

<table>
<thead>
<tr>
<th>Use</th>
<th>O-P</th>
<th>C-N</th>
<th>C-G</th>
<th>C-R</th>
<th>C-M</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caretaker’s unit</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>26</td>
</tr>
<tr>
<td>Residential care facility</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>1</td>
</tr>
</tbody>
</table>

1. Prohibited in SP 182
2. Subject to the provisions of Chapter 17.45 (adult entertainment establishments)
3. Requires a Special Operations License as described in ECMC Chapter 5.16. For towing services, only police towing services require a Special Operations License
4. Offsite outdoor automobile sales are subject to the provisions of Section 17.225.190
Subject to the provisions of Chapter 17.215 (automotive fueling stations)

Subject to the provisions of Chapter 5.40 of the El Cajon Municipal Code.

Subject to the provisions of Section 17.190.270 (billboard signs)

Subject to the provisions of Chapter 17.210 (alcohol sales)

Subject to parking requirements listed in Section 17.185.190.

“Check cashing only” services are prohibited in SP 182.

Subject to the provisions of Section 17.130.250 (kiosks)

Subject to the provisions of Section 17.225.070 (massage parlors)

Subject to the provisions of Chapter 17.230 (motion picture theaters)

Subject to the provisions of Section 17.225.090 (outdoor dining areas)

Subject to the provisions of Chapter 17.235. (personal storage facilities)

The retail display area shall not exceed 15% of the gross floor area in the O-P zone.

Subject to the provisions of Section 17.225.100 (resource recovery centers)

Restaurants limited to 2,000 square feet gross floor area in the C-M zone.

Subject to the provisions of Section 17.225.130 (take-out only restaurants)

Subject to the provisions of Chapter 17.240 (tobacco and smoke shops)

As determined by the director of community development

Excludes wireless communications facilities as defined in Chapter 17.110

Subject to the provisions of Chapter 17.245 (wireless communications facilities)

Subject to the provisions of Section 17.225.170 (transition service centers)

Excludes public contact in the C-M zone (mail processing only)

Only one caretaker’s unit permitted per lot in association with an authorized primary use occupying the same property. Must be attached to the primary structure on the lot, if such a structure exists.

May only be operated as an ancillary use to 1) a bona fide non-profit club, society, professional organization, union hall, fraternal organization, and similar (non-profit) use, with a valid conditional use permit for the primary use, and 2) a restaurant, except that card rooms are prohibited at restaurants in SP 182. Subject to additional card room regulations listed in Chapter 5.28 (Card rooms) of Title 5 and Chapter 17.225 (Miscellaneous Special Uses and Regulations) of this Title. Non-profit status must be in place prior to application submital, as applicable.

(Ord. 4979 §§ 6, 7, 2012; Ord. 4968 § 39, 2011)
NAME OF POLICY: Public Convenience or Necessity Review  
Policy # A-10

ADOPTED BY: Director  
Planning Commission  
Other  
Effective: 11-24-10

OTHER RELATED POLICIES:

What is the Purpose of Public Convenience or Necessity review?

Public Convenience or Necessity review provides the City with the means to review proposals for new or property transferred alcohol licenses within the City of El Cajon for retail stores greater than 15,000 square feet or for which a conditional use permit is required.

The purpose of this process is to provide appropriate feedback to the State of California in connection with any request for issuance of licenses for the off-sale of alcoholic beverages by the California Department of Alcoholic Beverage Control (ABC) in those areas that are deemed to be over-concentrated with off-sale outlets or those areas that are considered to have high crime or very high, as specified in business and Professions Code Section 23958.

The Director of the Community Development Department or the Planning Commission (when a conditional use permit is required), shall determine public convenience or necessity for alcoholic beverage license applications. The following criteria and procedure shall be used in making such determinations:

Procedure:

1. The applicant shall file with the Planning Division the Alcohol Beverage Control "Form Per Section 23958.4", commonly known as a "PCN" form, and remit the Director's Determination Fee. This fee is not required if the PCN request is filed concurrently with a conditional use permit.

2. A copy of the PCN form shall be sent to the Police Department (Sgt. Mike Moulton) for comment. The Policy response shall be a recommendation to approve, conditionally approve, or deny the application, and any recommended conditions. A recommendation for denial shall state reasons for recommendation.
3. The Community Development Director or the Planning Commission shall make a decision as to whether a determination of public convenience or necessity can be made based on the criteria set forth in Municipal Code Section 17.210.090 and the recommendation of the Police Department.

4. The decision shall be transmitted in writing to the Department of Alcoholic Beverage Control and the applicant.

5. The Planning Division secretary shall place a copy of signed PCN form and transmitted correspondence in associated conditional use permit file or in the appropriate PCN file.

6. The decision of the Community Development Director may, within ten days of the date of that written decision, be appealed in writing by the applicant to the Planning Commission. An applicant shall pay the appropriate appeal fee.

7. When the appeal is received by the Planning Division, the Secretary of the Planning Commission shall schedule the matter for next available Planning Commission meeting. The Director shall provide the Planning Commission with a written brief on the matter and the written appeal.

8. The Planning Commission shall consider the matter and render a decision regarding the determination of public convenience or necessity. Any decision of the Planning Commission shall be in the form of a resolution and is final, unless appealed to the City Council.

9. The decision of the Planning Commission shall be transmitted to the applicant, and if different from the decision of the Director, shall also be transmitted to ABC.
Public Convenience and Necessity

The Alcoholic Beverage Control Act (the “Act”) requires that the Department of Alcohol Beverage Control must deny an application for a new off-sale or on-sale license if issuance of the license would create a law enforcement problem, or if issuance would result in or add to an “undue concentration” of licenses, except under certain circumstances. Those circumstances include a showing of “public convenience and necessity” to justify the issuance of the license.

In the case of on-sale licenses for restaurants, hotels, motels, and breweries the applicant has the burden to prove that the “public convenience and necessity” exists to allow the issuance of the new license; in the case of off-sale licenses that determination must be made by the City Council, provided that the City Council notifies the Department of its determination within 90 days of notification of the completion of the application.

Nowhere in the Act is the term, “public convenience and necessity,” defined, leaving the Department (in the case of applications where the applicant must make the showing) and the City Council (in the case of off-sale license applications) to define that term. In reaching a definition, which would be considered a quasi-legislative action, the City Council must not act so unreasonably so as to be an abuse of discretion as a matter of law. One way to come up with the definition would be to use definitions of “public,” “convenience,” and “necessity,” from a recognized dictionary.
Planning Division
Alcohol Strategy Study

Off-Sale Outlet Concentration by Census Tract

- Under concentration limit
- At license concentration limit
- Above concentration limit

Outlets $< 15,000$ SF
Outlets $> 15,000$ SF

Miles
0 1 2
N

Under concentration limit
At license concentration limit
Above concentration limit
Outlets $< 15,000$ SF
Outlets $> 15,000$ SF
Planning Division
Alcohol Strategy Study

Crime Reporting Districts

- 3 - 94 (Low)
- 95 - 142 (Average)
- 143 - 238 (High)
- 239 - 526 (Very High)
Impacted Areas

- At or above off-sale license concentration limits and high and very high crime reporting districts
- Impacted commercial land
- Alcohol related arrest
- Outlets < 15,000 SF
- Outlets > 15,000 SF

* 323/688 acres (47%) of commercially zoned properties fall under this "Impacted" category.
Tipping Point Areas - Crime

Below off-sale license concentration limits and high and very high crime reporting districts not within SP No. 182

Commercial land within the tipping point areas

Alcohol Related Arrest

Outlets < 15,000 SF

Outlets > 15,000 SF

SP No. 182

* 5.6688 acres (0.8%) of commercially zoned properties are within these tipping point areas
Commercial Zones

Planning Division
Alcohol Strategy Study

Commercial zones cover 688 acres of the City's 9281 acres (7.4%)
Planning Division
Alcohol Strategy Study

Road Segment Study
Non-DUI Alcohol Related Arrests per Quarter Mile

<table>
<thead>
<tr>
<th>Street Name</th>
<th>Segment Detail</th>
<th>Arrests per Quarter Mile</th>
</tr>
</thead>
<tbody>
<tr>
<td>El Cajon Blvd</td>
<td>Between I-8 off-ramp and W Main St</td>
<td>3.88</td>
</tr>
<tr>
<td>W Main St</td>
<td>Between Travelodge and Magnolia Ave</td>
<td>7.33</td>
</tr>
<tr>
<td>E Main St</td>
<td>Between N 2nd St and City Boundary</td>
<td>7.88</td>
</tr>
<tr>
<td>Fletcher Pkwy</td>
<td>Between SR-67 and the Western City Boundary</td>
<td>9.91</td>
</tr>
<tr>
<td>N 2nd St</td>
<td>Between Interstate-8 and the Northern City Boundary</td>
<td>10.56</td>
</tr>
<tr>
<td>Broadway</td>
<td>Between the Eastern City Boundary and SR-67</td>
<td>10.71</td>
</tr>
<tr>
<td>Jamacha Rd</td>
<td>Between E Main St and the Southern City Boundary</td>
<td>11.68</td>
</tr>
<tr>
<td>E Main St</td>
<td>Between Magnolia Ave and N 2nd St</td>
<td>36.48</td>
</tr>
<tr>
<td>N 2nd St</td>
<td>Between E Main St and Interstate-8</td>
<td>81.21</td>
</tr>
</tbody>
</table>
beer and wine) licenses in the City exceeds one for each 2,500 inhabitants. Therefore, ABC will not issue new Type 20 licenses in the City of El Cajon and will not allow the transfer of an existing license into the City, without a finding by the City of public convenience or necessity.

Oversaturation of alcoholic beverage retailers strains City resources aggravating existing crime problems and negatively impacts public safety. Based on the Police Department’s investigation in this particular application, it is not in the public convenience or necessity to authorize a new off-sale license on the subject property and it is recommended this application be denied.

Should the City Council choose to grant the CUP over this objection, the Police Department would recommend the following conditions:

The CUP applicant be required to purchase two Type 20 licenses within over-concentrated census tracts within the City. Furthermore, one of the licenses shall be cancelled with ABC. This action would result in the net reduction of one Type 20 license within El Cajon and no net new licenses within the subject census tract.

In addition, the Police Department recommends the following conditions:

1. Sales of alcoholic beverages shall only be permitted between the hours of 10:00 AM and 11:00 PM.

2. The petitioner shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.

3. No wine shall be sold with an alcoholic content of greater than 15% by volume except for “Dinner Wines” which have been aged two years or more.

4. Beer, wine coolers and other malt beverages cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi unit quantities.

5. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

6. A maximum of 10 percent of the retail display area may be devoted to the sale and display of alcoholic beverages limited to off-sale beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers.
2011 Moratorium Counties/Cities

2011 Moratorium Figures – Section 23817.5 B & P Code

On January 1, 1998, Section 23817.5 was amended to permanently establish a moratorium on the issuance of off-sale and wine licenses (Type 20) in cities and counties where the ratio of Type 20 licenses exceeds one for each 2,500 inhabitants.

In the city and county of San Francisco, the ratio has been established as one for each 1,250 inhabitants. The San Francisco computation combines off-sale beer and wine license with off-sale general licenses for the purpose of establishing the ratio.

Enclosed are the following lists and a map showing the new Type 20 license limitation data:

- List of Counties with their moratorium status.
- List of Cities in Counties with partial moratorium status.
- Summary of Changes to Moratorium Counties/Cities.

Please note the changes in moratorium counties compared to the 2005 list. There have been changes in some of the cities within the current 11 non-moratorium counties.

The new moratorium lists are effective as of May 9, 2011 and will be in effect until recalculated in approximately five years, in accordance with Section 23817.9.

The enclosed lists and map may be distributed to all interested parties.

If you have any questions or need additional information, please contact Debbie Holden:

Email: Debra.Holden@abc.ca.gov
Phone: (916) 419-2535
# MORATORIUM - COUNTIES - SECTION 23817.5 B.P. CODE

**May 9, 2011**

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MORATORIUM CITIES - SECTION 23817.5 B. P. CODE

Effective May 9, 2011

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## MORATORIUM CITIES - SECTION 23817.5 B. P. CODE

Effective May 9, 2011

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Revised 05/9/11
MORATORIUM CITIES - SECTION 23817.5 B. P. CODE

Effective May 9, 2011

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RIVERSIDE COUNTY

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SACRAMENTO COUNTY

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Revised 05/9/11
MORATORIUM CITIES - SECTION 23817.5 B. P. CODE

Effective May 9, 2011

SAN BERNARDINO COUNTY

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SAN MATEO COUNTY

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Revised 05/9/11
### MORATORIUM CITIES - SECTION 23817.5 B. P. CODE

**Effective May 9, 2011**

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Reducing Community Alcohol Problems Associated with Alcohol Sales:
The Case of Deemed Approved Ordinances in California

James F. Mosher
Carol Cannon
Ryan Treffers
September 2009

Alcohol Policy Consultations
6062 Graham Hill Road, Suite B
Felton, CA, 95018
www.alcoholpolicyconsultations.com

Report prepared for
Ventura County Behavioral Health Department
Alcohol & Drug Programs
Prevention Services
Acknowledgements

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Berkeley, CA

Sharon O'Hara
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Novato, CA

Michael Sparks
Petaluma, CA

Cliff Waer
Senior Alcohol Compliance Officer
Oxnard Police Department
Oxnard, CA

Friedner D. Wittman, Ph.D, M.Arch
Institute for the Study of Social Change
University of California at Berkeley
Berkeley, CA

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Reducing Community Alcohol Problems Associated with Alcohol Sales: The Case of Deemed Approved Ordinances in California

I. INTRODUCTION

Alcohol retail sales establishments may pose serious health and safety risks for neighborhoods and communities. Research has shown that the number, density, location, and operational practices of alcohol outlets affect the level of community violence, drinking-driving incidents, injuries, underage drinking, public nuisance activities, among other social problems. Having large numbers of bars and liquor stores concentrated in a small geographic area is likely to create serious neighborhood disruption, particularly if the outlets promote heavy drinking and are located near sensitive uses such as schools, parks, and private residences.

The link between alcohol retail sales establishments and community health and safety problems has prompted governments to regulate their number, location, and practices. Most States establish minimum guidelines through a licensing system and permit local governments to impose additional restrictions in order to tailor the alcohol availability structure to meet local circumstances, needs, and problems. Typically, local controls are exercised through land use and zoning and/or planning and public safety ordinances. Some States delegate licensing authority to local jurisdictions. However, some States exercise exclusive or near exclusive regulatory authority over alcohol retail sales, prohibiting (or “preempting”) local authority regarding this particular type of land use. California is one such State.

The California Constitution declares that “the State of California ... shall have the exclusive right and power to license and regulate the ... sale ... of alcoholic beverages within the State” to the exclusion of cities and counties. The State legislature has carved an exception to this general rule, by prohibiting alcohol retail licensing from being issued if the issuance would violate a valid local zoning ordinance. The relevant provision states:

“No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation [under specified conditions].”

California courts have upheld this delegation of authority and have interpreted it broadly in recognition of the important traditional role local governments play in regulating land use and protecting public safety. There is a fundamental conceptual difference between land use regulation and alcohol regulation:

“The essence of zoning lies in metropolitan and regional planning; it is the use and treatment of public and private land and its appurtenances in the interest of the community as a whole. The factors and reasons that determine the imposition of metropolitan zoning are entirely different from those which control the regulation of the [production, distribution, sale and] consumption of liquor.”

This conceptual distinction may be difficult to apply in practice since many regulations have aspects of both alcohol and land use regulation.

Beginning in the early 1980s, many California cities became concerned about the public health and safety issues associated with the overconcentration of alcohol outlets, particularly in urban settings. California law provides only minimal controls on the number of alcohol licenses that can be issued at the county level and no restrictions at the municipal level. Local jurisdictions responded by exercising their land use powers through the enactment of Conditional Use Permit (CUP) ordinances specific to alcohol outlets. Today most local jurisdictions have some form of CUP ordinance. CUP ordinances, however, are an imperfect tool. Retail alcohol establishments in existence before their enactment in a particular city or county are exempt (or “grandfathered” or treated as “non-conforming uses”) and must be allowed to continue operation without restrictions on the alcohol sales practices. The large majority of a city’s alcohol outlets fit this category, and the existence of a CUP ordinance encourages existing businesses to maintain their grandfathered status, which can be transferred to new owners.
The inability to regulate grandfathered retail establishments prompted the City of Oakland to enact the first "deemed approved" ordinance (DAO) in 1993. The ordinance exercises authority over these establishments by issuing "deemed approved" permits and establishing "public nuisance standards" that pre-existing retailers must abide by in order to maintain their permit. The standards are monitored by the city through an enforcement and education program which is paid for by a fee on the deemed approved outlets. The standards do not directly regulate the sale of alcohol, but rather address land use and public safety issues associated with alcohol sales, such as loitering, increased police calls, noise, graffiti, and drug sales.

Oakland alcohol retailers challenged the ordinance in court on two grounds: (1) The ordinance constituted regulation of the sale of alcohol and was therefore preempted by the State Constitution; and (2) The fee was in fact a tax, also prohibited under State law. The California Court of Appeal rejected these claims, and the California Supreme Court allowed it to stand without further review. The court concluded that the ordinance did not directly regulate the sale of alcohol so did not violate the State Constitution and that the city was exercising its authority through land use measures. It also held that the fee was permissible because it was assessed based on the city's costs associated with retail establishments and all revenues from the fee are used to administer and enforce the ordinance and promote retailer education. Taxes and fees are distinguished based on these two factors.

The Oakland DAO became a model for many other cities and counties, with 19 additional cities enacting some form of a DAO ordinance in the last 15 years. In 2008, the Ventura County Behavioral Health Department commissioned a study to develop a "best practices" guide for drafting CUP and deemed approved ordinances. The recommendations were developed based on key informant interviews and a review of relevant research. Yet, despite this increased interest and attention to this form of local control, there has been surprisingly little analysis across jurisdictions or at the statewide level regarding the structure of existing ordinances, enforcement strategies, and impact on community alcohol problems.

This study represents a first step in filling this gap in the research literature. It is a descriptive, comparative analysis of the legal provisions found in 12 DAOs from across California, comparing them to the provisions recommended in the best practices guide developed in 2008. The analysis is limited because the legal provisions themselves will have little or no impact unless they are effectively administered and enforced, topics beyond the scope of this analysis. Enforcement practices are dependent on numerous factors, including the structure and breadth of the ordinance. Our analysis therefore focuses particularly on those provisions that may enhance or hinder effective enforcement practices.

II. METHODS

We conducted a content analysis to identify key provisions, based on the research literature on the impact of alcohol retail establishments on community problems, with particular attention to provisions that would affect enforcement practices. We developed variable definitions based on this review of key provisions.

We searched the secondary literature to identify DAOs in California and located 19 such laws. We reviewed these laws and selected 12 for further analysis based on the following criteria. To be included, ordinances needed to: (1) Target alcohol outlets that were in existence prior to the passage of a CUP ordinance and therefore exempt from the CUP provisions (referred to here as "pre-existing" or "grandfathered" retail establishments); and (2) Authorize (at least implicitly) revocation of a pre-existing retail establishment's deemed approved status or permit for violations of the deemed approved standards. Typically, a revocation results in the outlet needing to apply for a CUP in order to continue operations. Our selection was further limited based on the breadth to which the ordinances addressed the key variables. Our focus is on the provisions that affect the grandfathered alcohol outlets. We ignored provisions in the ordinances that affected new outlets subject to CUP provisions.

The six categories of variables are defined as follows:
Types of Alcohol Outlets

A DAO must define which types of retail alcohol establishments the ordinance applies to.

Off-sale retail licenses: Deemed approved requirements apply to establishments selling alcohol for off-sale consumption. No jurisdiction distinguishes between licenses that are restricted to beer and wine.

On-sale retail licenses: Bar/Nightclub: Deemed approved requirements apply to establishments selling alcohol for on-sale consumption, including bars, nightclubs, and restaurants. Ordinances that exempt some types of restaurants are highlighted in footnotes to Table 1.

Performance Standards

These are the standards to which all deemed approved establishments will be held.

Nuisance listing: Extensive/Minimal: Deemed approved performance standards require that licensed establishments take action to prevent various nuisance activities associated with their businesses. Specific nuisance activities may include: disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or police detentions and arrests. The ordinances in our analysis were rated either comprehensive (listing all or most of those above) or minimal (providing only a general description of nuisance activities). As noted in the finding section, no ordinance fell between these two extremes.

Close proximity: Ordinance specifies that the extent of the nuisances to be prevented includes those occurring near to or in close proximity of (as well as within) the establishment.

Federal/state/local laws: Performance standards specify that the establishment comply with all federal, state, and local laws.

Compatibility: Performance standards specify that the establishment's upkeep and operating characteristics remain compatible with and will not adversely affect the livability or development of abutting properties and surrounding neighborhoods.

Enforcement and Administration

DAOs may provide standards and guidelines for their enforcement and administration.

Community engagement: Ordinance mandates a role for community and industry groups in enforcing or administering the ordinance or provides a formal mechanism for providing input into the process.

Dedicated enforcement officer: Ordinance mandates a dedicated officer for the enforcement of deemed approved standards. Ordinance may specify that funding for this position come from annual fees paid by deemed approved establishments.\(^{13}\)

Dedicated hearing officer: Ordinance mandates a dedicated hearing officer for the adjudication of complaints made against deemed approved establishments. Ordinance may specify that funding for this position come from annual fees paid by deemed approved establishments.

Appeal: Specifies the municipal body to which an establishment might appeal judgments and penalties:

- Planning/zoning: Appeals go to the planning or zoning commission.
- City Council: Appeals go to the city council or board of supervisors.
- Other: See Notes section for details.
Type of Ordinance

Describes where the DAO is found in the municipal or county code.

Land Use: Found in sections pertaining to land use (Zoning, Planning).

Nuisance/Police Powers: Found in sections pertaining to nuisance activities or other responsibilities assigned to local law enforcement agencies (Nuisance, Public Safety, Public Peace, Morals).

Penalties

Describes the types of penalties imposed on violators of deemed approved standards.

Remedy opportunity: Licensee is informed of violations and given the opportunity to remedy before other sanctions are imposed.

Civil: Civil penalties (such as citations and fines) may be imposed for violations.

Criminal: Criminal penalties may be imposed for violations.

Costs: Violators required to pay the city for the costs of enforcement and administration, such as the cost of repeated police or other municipal responses to complaints or re-inspection of establishment following a notification to remedy.

Revocation, when permitted: Describes the requirements for revoking an establishment's deemed approved status and/or ordering that the licensee cease and desist conducting business.

Fee Schedule

Describes the criteria for fees paid to the city or county by deemed approved licensees. Some cities use a combination of criteria (such as risk, hours, and volume) to calculate fees. Note fees may be imposed on a one-time basis.

Risk: Fees calculated by degree of risk associated with establishment. Risk may be dependent on the type of business (e.g., bars versus restaurants), past history of complaints, or calls for police service associated with the establishment.

Hours: Fees calculated by how late the establishment is open.

Volume: Fees calculated by volume of alcohol sales.

Re-inspection: Fee charged for re-inspection of an establishment after order to remedy.

Minimum: Minimum fee paid to municipality by deemed approved establishments.

Maximum: Maximum fee paid to municipality by deemed approved establishments.

DEEMED APPROVED ORDINANCES: CALIFORNIA CITIES AND COUNTIES

(See Table 1 on page 8.)

III. FINDINGS

Types of Alcohol Outlets

Recommended practice: Include all alcohol outlets in the jurisdiction.

The recommended practice is based on the potential risks posed by commercial alcohol service generally. Outlet types deemed to be low risk can be charged lower fees while still being subject to the ordinance's provisions.
<table>
<thead>
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<th>Outlet Type</th>
<th>Performance Standards</th>
<th>Enforcement &amp; Administration</th>
<th>Type of Ordinance</th>
<th>Penalties</th>
<th>Revocation: when permitted</th>
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<td>X</td>
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<td>If violation is found at first hearing, conditions shall be imposed. If conditions are violated revocation may occur at second hearing.</td>
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<td>X X</td>
<td>X X X X</td>
<td>X X X X X^1</td>
<td>X X X X</td>
<td>City manager may seek court order to prohibit alcohol sales if owner refuses to comply with notice to abate. The ordinance also states that “any other action available to the city” can also be taken, which could include revocation.</td>
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<td>X</td>
<td>X X X X</td>
<td>X</td>
<td>X X X</td>
<td>Planning Commission can revoke after public hearing.</td>
</tr>
<tr>
<td>Rohnert Park</td>
<td>X X X</td>
<td>X X X</td>
<td>X X X X</td>
<td>X</td>
<td>X X X</td>
<td>After hearing by Public Safety Director.</td>
</tr>
<tr>
<td>San Francisco</td>
<td>X X</td>
<td>X</td>
<td>X X X X</td>
<td>X X X X X</td>
<td>X X</td>
<td>Second violation within 3 years.</td>
</tr>
<tr>
<td>San Leandro</td>
<td>X X^4</td>
<td>X X X</td>
<td>X X X X</td>
<td>X</td>
<td>X X X</td>
<td>No fee</td>
</tr>
<tr>
<td>Santa Cruz</td>
<td>X X X</td>
<td>X X</td>
<td>X X X X</td>
<td>X</td>
<td>X X X</td>
<td>violation of conditions set in first hearing where violation is found.</td>
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<tr>
<td>Santa Rosa</td>
<td>X X^10</td>
<td>X X X</td>
<td>X X X X</td>
<td>X</td>
<td>X X X</td>
<td>Administrative Hearing Officer may revoke after hearing.</td>
</tr>
<tr>
<td>Vallejo</td>
<td>X X X</td>
<td>X X X</td>
<td>X X X X</td>
<td>X</td>
<td>X X X</td>
<td>After hearing by Administrative Hearing Officer.</td>
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<tr>
<td>Ventura</td>
<td>X X</td>
<td>X X</td>
<td>X X X X</td>
<td>X</td>
<td>X X X</td>
<td>Not specified.</td>
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<table>
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<tr>
<th>Annual Fee Schedule</th>
<th>Outlet Type/Calls for Service</th>
<th>Hours</th>
<th>Volume</th>
<th>Re-inspection</th>
<th>Minimum</th>
<th>Maximum</th>
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<td>$2,5018</td>
<td>$1,400</td>
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With a few exceptions noted below, the localities generally apply their deemed approved ordinances to all alcoholic beverage retailers. Ordinances apply city- or county-wide and are not restricted to certain geographical zones.

San Francisco differs the most significantly from the other localities in that its ordinance applies only to off-sale retailers. With the exception of San Leandro (where the ordinance is unclear), San Francisco is the only locality that does not have a deemed approved ordinance that covers bars and nightclubs. Two cities exempt at least some restaurants. Oakland exempts “full-service” restaurants, which are defined as having facilities to prepare and serve meals on the premises. To qualify for the exemption, the establishment must have at least 60 percent of its revenue derive from food sales. Santa Rosa only includes “restaurants with bars” and exempts restaurants “which serve alcoholic beverages as part of a meal.”

**Performance Standards**

**Recommended practice: Include a comprehensive list of nuisance activities; include nuisance activities within and in the vicinity of the retail establishment; include provision related to compatibility with surrounding neighborhoods.**

The recommended practice reflects the importance of being both specific and inclusive when drafting ordinances. Including the list of nuisance activities in the DAO itself is recommended to clarify that local planning/zoning officials have primary enforcement and administration responsibility (who need not defer to city attorney or county counsel offices).

The jurisdictions largely hold outlets to similar performance standards. However, there are some notable exceptions. All jurisdictions except Ventura include an extensive list of specific nuisance activities that are prohibited. The Ventura ordinance provides a general prohibition of nuisance activities. San Francisco limits its ordinance’s application to activities within the establishment’s property line. Other ordinances include nuisance activities in “close proximity of” or “near” the retail establishment. Richmond is the only locality that does not require that deemed approved outlets meet all Federal/State/local laws.

Five jurisdictions (Oxnard, Richmond, San Francisco, Santa Cruz, and Ventura) do not include a requirement for outlets to be compatible with other land uses in their neighborhoods. Such a provision gives additional authority to consider the adverse impacts of the retail establishment on the community more generally. San Francisco is the only jurisdiction that does not impose either a proximity or compatibility standard.

**Enforcement and Administration**

**Recommended practice: Specify a team that has specific responsibility to monitor, administer, and enforce the deemed approved ordinance.**

Decisions regarding who will enforce and administer the ordinance, the methods to be used, the role of community actors, and the priority to be placed are delegated to city/county departments and staff. City Councils and Board of Supervisors can enhance the likelihood of effective enforcement and administration by providing clear standards and guidelines to staff. Establishing mechanisms for engaging community and business groups is an important aspect of effective administration.

Some ordinances identify specific agencies or individuals with primary responsibility for monitoring and enforcing their deemed approved ordinances. The ordinances in Alameda County and Vallejo specify dedicated enforcement and hearing officers; Santa Rosa and Oakland specify dedicated hearing officers only. Vallejo has the most detailed designated enforcement/implementation provisions. Its ordinance creates a three-member complaint response team, including representatives from development services department, police department, and a citizens’ community coalition. It also establishes an alcohol outlet advisory board that must include at least two business owners. The board meets with the dedicated enforcement officer regularly to review complaints and to make recommendations on how to reduce/eliminate problems.
Note that many other cities/counties may meet the best practice standard through administrative decisions and without specific provisions in the ordinance (a topic beyond the scope of this analysis).

All jurisdictions provide specific procedures for the retailer to appeal decisions to impose sanctions. The size of the community may affect the decision regarding what body will hear the appeal, with larger jurisdictions having more pre-existing options. In general, having an initial review occur within the administrative structure of the city or county government (e.g., a planning board) will reduce costs to the city and reduce the likelihood of political pressure being placed on the appeals process.

**Type of Ordinance**

**Recommended practice: Not specified.**

Deemed approved ordinances can be either land-use or public safety-based enactments. The jurisdictions are about split between these two options. The decision regarding the location of the DAO in the city or county’s municipal code will rest on local policy and political considerations and the structure and practice of the jurisdiction’s administrative and law enforcement functions. Choosing between these options should reflect an assessment of which agencies and staff will best insure effective administration and enforcement.

**Penalties**

**Recommended practice: Licensee is given notice of violation by enforcement team and provided opportunity to abate prior to hearing. Civil penalties should be given priority over criminal penalties. Penalties should become increasingly severe for either (1) failure to abate despite warnings; or (2) multiple violations, with revocation authorized. Associated costs should be included in civil penalty.**

The recommended practice reflects the importance of imposing penalties that are sufficiently severe to serve as a deterrent. Civil penalties are more effective than criminal penalties because they can be imposed more swiftly and are more likely to be enforced, two critical components of deterrence.

All ordinances provide some penalty for violations except Santa Cruz, which does not specify penalties in the DAO provisions. Half of the localities provide violators the opportunity to remedy a nuisance prior to imposing other sanctions (which can also be permitted administratively, without a specific provision in the DAO). All jurisdictions include civil penalties and five ordinances impose both types of sanctions. Civil penalties take the form of monetary fines and adjudicated by administrative personnel; criminal penalties include misdemeanor convictions that may also carry jail sentences and are adjudicated through the criminal justice system.

Eight localities permit recovery of costs associated with prosecution, appeals, compliance, and abatement of nuisances. Such fees both penalize a violator and provide reimbursement for the city or county’s enforcement and administrative costs.

Seven jurisdictions allow for revocation of an outlet’s deemed approved permit after the first hearing where a violation is established. Three do not permit revocation until after a second hearing at which a finding is made that the offending outlet failed to meet requirements or conditions established following a finding of a first violation. Two ordinances – in Ventura and Petaluma – do not specify when revocation can occur. Oxnard’s ordinance contains two provisions. The first requires the city manager to seek a court order before revocation of permit can occur, and the second states that “any other action available to the city” can be taken, which could include revocation of the deemed approved permit and a requirement that the licensee seek a special use permit (which in turn could be denied). It is therefore coded to permit revocation after the first hearing where a violation is established.

**Fee Schedule**

**Recommended practice: Fee should be imposed to defray cost of monitoring and enforcement based on risk factors (amount of fee not specified).**
Fees represent a critical aspect of DAO ordinances because they provide the resources for effective administration and enforcement and for promoting retailer education. Basing the fee structure on risk factors and past history insures an equitable distribution of costs—licensees that create increased risks of health and safety problems pay more reflecting the higher costs of monitoring their businesses.

The jurisdictions are split into three groups with regards to charging fees for monitoring, education and enforcement. Rohnert Park, Santa Cruz, Santa Rosa, and Ventura base their fees on a set of risk factors (type of outlet, police calls for service, hours, and volume of sales), with higher risk establishments paying higher fees. Santa Rosa's fee is based solely on the volume of sales. Alameda County, Oakland, Oxnard, and San Francisco charge a flat rate fee to all deemed approved outlets. Vallejo charges a one-time flat fee that is imposed at the time an outlet receives its deemed approved permit. Petaluma, Richmond and San Leandro do not charge any fees. The fee amount varies widely between the localities, from zero to $5,000 annually. The use of a fee schedule or a flat rate does not predict the amount of the fee. Alameda County, Oakland, San Leandro, and Santa Rosa impose re-inspection fees. These are in addition to the cost recovery provisions reported in the Penalties section.

IV. DEEMED APPROVED ORDINANCES IN VENTURA COUNTY

Two jurisdictions in Ventura County—the cities of Oxnard and Ventura—have DAOs, which share some similarities. Both cities require that all types of alcohol outlets (off-sale, bars/nightclubs, and restaurants) follow deemed approved performance guidelines. They also both include the performance standards provisions that deemed approved establishments are responsible for nuisance activities in close proximity to each establishment, and that establishments follow Federal/State/local laws. Although neither city's ordinance has mandated a dedicated enforcement or hearing officer for deemed approved violations, both in fact have created such a position in the police department through administrative action. Both cities impose fees. Ventura has established a fee schedule that can vary between $250 and $1,400 depending on the type of business, hours of sale, and volume of alcohol sales. Oxnard has a fixed fee of $427.

While sharing these similarities, the cities differ in their definition of nuisance activities. The Oxnard ordinance specifies 21 separate activities as nuisances that deemed approved establishments are responsible for preventing, compared to the Ventura ordinance, which refers only to "nuisance conditions" and litter and graffiti. The appeals and revocations processes for Oxnard deemed approved establishments are specified in the ordinance, while the Ventura code does not specify how these processes are to be carried out. Oxnard includes civil penalties and cost recovery among the potential penalties accrued by establishments in violation, while the Ventura ordinance refers to civil and criminal penalties.

V. DISCUSSION

In general, our findings suggest that all twelve ordinances maintain the same core structure and strategies employed by the original Oakland ordinance upheld by the California Court of Appeal. This is not surprising, since any major deviations that imposed significant additional burdens on licensees would likely lead to costly and possibly unsuccessful litigation. All the ordinances provide the basic tools for monitoring grandfathered alcohol establishments and reducing their adverse impact on community health and safety. In most cases, the ordinances provide sufficient enabling authority to support a comprehensive monitoring and enforcement program. San Francisco provides a notable exception to this general observation, since its ordinance exempts on-sale establishments. Jurisdictions that exempt restaurants may also encounter unintended barriers, since the definitions for restaurants may create ambiguity. Unless carefully monitored, exempted restaurants may transform into bars or nightclubs during late night hours. Such transformations (sometimes called "morphing") have been observed in California communities with large populations of college-age youth. This highlights the importance of having clearly articulated definitions of terms used in the ordinances.

Although the core structures are similar, there remains a good degree of variation that may affect a jurisdiction's...
commitment to monitoring and enforcement. In other words, specific provisions may support or discourage effective implementation. Examples of supportive provisions include:

- Vallejo’s establishment of a complaint response team and advisory board;
- Remedy opportunity provisions, that provide city officials with the authority to seek resolution of the problem without the need for formal hearings;
- Provisions that make retailers responsible for nuisance activities beyond the strict confines of their establishment and include consideration of the compatibility of the business to other land uses in the neighborhood;
- A clearly articulated hearing and appeals process to be followed in instances of serious non-compliance, reinforcing the city’s intent to enforce the ordinance.

Examples of provisions that may discourage effective implementation include:

- San Leandro’s and Richmond’s lack of penalties for violators beyond paying costs;
- Ventura’s lack of a clear definition of what constitutes a public nuisance in the context of alcohol sales.

Ventura County Behavioral Health Department’s best practices analysis is focused at precisely this level—establishing standards for drafting DAOs that will facilitate their effectiveness in reducing community health and safety problems. All of the ordinances met some of the recommended standards, but all have some omissions or weaknesses. The weaknesses are not necessarily fatal and can be addressed through effective administration. For example, a dedicated law enforcement officer position and complaint response team can be established whether or not they are mandated by the ordinance. However, these practices are more likely to occur and less likely to be abandoned or undermined over time if they are formalized in the ordinance.

These observations point to a limitation of our study. Our analysis focuses on the provisions found in specific DAOs. It omits both administrative practice and companion municipal code provisions not included in the DAO. Our findings and conclusions regarding the relative strength of a particular DAO should be interpreted with this limitation in mind. A city with a relatively weak DAO may have companion provisions addressing some of the identified weaknesses and may have a strong program on the ground. Conversely, a city with a relatively strong ordinance may have weak implementation.

Fees

The findings regarding fee schedules deserve special note. California cities and counties face limited and shrinking budgets, creating enormous pressure on local law enforcement officials to maintain staff and meet conflicting demands for service. DAO enforcement may be in jeopardy despite its positive impact on community safety and the likelihood that it reduces costs through preventing crime and violence. The problem may be exacerbated by the fact that many jurisdictions have relied on GAP (Grant Assistance Program) funds from the California Alcoholic Beverage Control Department to fund local enforcement of ABC laws. When the GAP funds end (usually after one year), the enforcement program is often terminated or continued without sufficient resources to maintain it. Fees provide a foundation for insuring that the costs of the deemed approved program are covered, providing ongoing support for local law enforcement programs, and underwriting the costs of retailer education through Responsible Beverage Service programs.

Increased attention is needed to the fee structure. Enforcement and administration of a DAO should be considered a cost associated with alcohol retail sales. Expecting retailers to incorporate the fee into the retail price of alcohol products is an appropriate exercise of local authority. These costs are enormous, particularly if public health costs are included. However, the costs are not equally spread across all alcohol outlets — some create added risks and costs based on the type and size of the outlet and the manner in which they are operated.

These considerations suggest two improvements to current practice. First, cities and counties should monitor on an ongoing basis their costs associated with retail alcohol sales and the costs of administering and enforcing a
A comprehensive deemed approved program. The identified and documented costs should be substantially covered through the fee program.

Second, fees should reflect the relative burden placed on the local jurisdiction by each retail establishment. Jurisdictions should track on a routine basis the past performance of retail establishments (e.g., calls for service, past violations, frequency of patron intoxication, and lack of compliance with Responsible Business Practices) and adjust fees to reflect the extent to which city/county resources have been expended. The Alcohol/Drug Sensitive Information Planning System (ASIPS) provides one means to collect such monitoring data. Retail establishment type is a second important factor to be considered in a fee structure, since, in general, some types (e.g., bars, nightclubs) create more risks and costs than others (e.g., restaurants without separate bars). The size of the alcohol outlet in terms of total alcohol sales represents a third factor, with larger outlets paying higher fees. This reflects the fact that the sheer volume of alcohol sales creates public health and safety costs across the jurisdiction.

A carefully structured fee schedule that is tied to the costs associated with the program will also insure that it can withstand a court challenge that the fee is in fact a tax. As discussed in the introduction, linking the fee to the costs being addressed and documenting those costs are critical steps in defending the fee's legality.

In this light, the fees being imposed among these twelve jurisdictions appear generally low and probably insufficient to fund an effective monitoring and enforcement effort. Consideration should be given to raising the fees to insure effective implementation and establishing an equitable fee structure based on the factors listed above. Increased monitoring of past performance should be integrated into the administration of the ordinance both to improve enforcement and to provide data for establishing fees.

NOTES TO TABLE 1

1. Dedicated enforcement officer is also dedicated hearing officer.
2. Oakland exempts "full service restaurants" that have facilities to prepare and serve meals on the premises. To qualify for the exemption, the establishment must have at least 60 percent of its revenue derive from food sales.
3. City Council only hears appeals of decisions to revoke deemed approved status.
4. City manager sends notice of abatement to property owner. Property owner may appeal notice to a hearing officer. Appeal of hearing officer's decision is filed in court.
5. Appeals filed through city clerk, and are heard by "hearing officer." Public safety director is charged with enforcement and conducts the hearing. Appeal of a decision to revoke goes to the city manager. The decision of the city manager is final.
6. Appeals are to Board of Appeals except for revocation, which is appealed to Board of Supervisors.
7. "Full-service restaurant," fast food establishments, dance halls and "retail establishments" are included. Bars and nightclubs not specifically included.
8. City attorney charged with enforcing all orders from Zoning Board or City Council.
9. Santa Rosa includes "restaurants with bars" in its ordinance. Restaurants "which serve alcohol with meals" are exempt.
10. Designates a three-member complaint response team, including representatives from development services department, police department, and VAPC (community coalition). Designates an alcohol outlet advisory board consisting of business owners to meet with police department to review complaints and to make recommendations on how to reduce/eliminate problems.
11. City Council only hears appeals of revocations.
12. ABC laws are specified; federal and local laws are not specified.
13. Appeal process not specified; default is City Council.
14. There is $500 fee for appealing an abatement notice.
15. Penalties not specified.
16. Retailers with less than $1,000 alcohol annual alcohol sales are exempt from fee.
17. There is a $200 additional permit fee for entertainment venues.
REFERENCES


7. *Id. at Appendix B: Case Studies*, pp. 119-140.


11. We did not attempt to locate all ordinances due to limited resources. Because there is no single repository for city and county ordinances and on-line search capabilities are limited, such a search would require contacting every jurisdiction.

12. Provisions related to Responsible Beverage Service training programs were excluded, since many cities enact RBS requirements in separate ordinances that would not have been captured in our ordinance search. We also excluded an examination of the links between DAO and CUP ordinances for the same reason. The “findings” sections of DAOs constitute an important variable as well because of their potential role in litigation. Our preliminary analysis suggested that the ordinances all had adequate findings sections and we therefore excluded them from our analysis on this basis.

13. Note that the ordinance can specify that a specific hearing officer will hear all DAO-related cases, but the hearing officer so identified must still be “independent”, (i.e., be impartial). *Haas v. San Bernardino*, 27 Cal.4th 1017, Cal. Rptr.2d 341 (2004).

14. Revocation of a deemed approved ordinance may not necessarily result in closure. The business may apply for a Conditional Use Permit under the city’s CUP ordinance that is applied to new businesses. The requirements for obtaining a CUP are typically more stringent than the performance standards applied to deemed approved outlets.

15. Fee schedules are usually not found in the deemed approved ordinances. We retrieved this information from other sources, including administrative fee schedules available from city governmental offices. All fee rates were confirmed by city officials with responsibility for administering the fees.


Liquor Stores, Bars and Nightclubs: Conditional Use Permits and Best Practices for Regulating Alcohol Sales

Thursday, September 22, 2011 General Session; 1:00 – 2:45 p.m.

Steven T. Mattas, Meyers Nave
Notes...
LIQUOR STORES, BARS & NIGHTCLUBS:
Conditional Use Permits and Best Practices for Regulating Alcohol Sales

League of California Cities Annual Conference
September 22, 2011

Prepared By:

meyers nave
Attorneys Steve Mattas and Jason Rosenberg
I. Introduction

Alcohol sales at liquor stores, bars and nightclubs create social and economic challenges for California’s communities. Neighborhoods where bars, restaurants, liquor stores and retail outlets that sell alcohol are close together or concentrated suffer more frequent incidences of violence, social dislocation, medical emergencies and property crimes. However, direct regulation of alcohol outlets by local governments is limited by California’s existing regulatory framework.

Upon the ratification of the Twenty-First Amendment, states became empowered to regulate alcohol sales, consumption, production and transportation. California gave exclusive jurisdiction to the state over manufacture, sale, purchase, possession and transportation of alcoholic beverages. In California, this regulatory authority is vested in the Department of Alcoholic Beverage Control (“Department”), which has the dual responsibility for both the issuance of liquor licenses and the regulation of existing licensees. The Department issues two broad categories of alcohol licenses. On-sale licenses are issued for businesses that sell alcohol for consumption on the premises, such as bars and restaurants. Off-sale licenses are issued for businesses that sell alcohol for consumption off the site, such as grocery stores, liquor stores, and corner markets. Additionally, one-day licenses are issued for the sale of alcohol at special events.

Because local authority to regulate alcohol sales and related activity is largely preempted by the Department, the challenge that cities face is how to properly regulate the ancillary aspects of alcohol sales without regulating in areas of exclusive state authority. Cities’ land use and police powers function as the effective tools in exercising local control over alcohol sales and its secondary effects.2

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2 Special Thanks to Stacy L. Saetta of Monterey County Counsel’s Office for her advice and recommendations concerning best practices for comprehensive ordinance adoption.
II. State Regulation of Alcohol Sales

Limited Local Authority and State Preemption

In 1955, the California Constitution was amended to establish a uniform framework for licensing alcoholic beverage sales throughout the state. The Constitution provides that “[t]he State of California . . . shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State.” The sale of alcohol is also regulated by the Alcoholic Beverage Control Act (Bus. & Prof. Code §§ 23000-25762). Accordingly, the Department was established to oversee the licensing process and it was given both the power to issue and revoke liquor licenses. The Department has specific criteria upon which it is permitted to issue and revoke licenses, and cities’ ability to participate in the Department’s license regulation is limited. Nevertheless, cities may participate in the Department’s licensing in a limited fashion, but also impose regulations pursuant to valid police power and/or land use authority. Local government regulation beyond those areas that have been specifically authorized by state law is preempted.

State License Issuance

Article XX, §22, of the California Constitution grants the Department the exclusive power to license the sale of alcoholic beverages in California. Section 22 grants the Department the power, \textit{in its discretion}, to deny, suspend or revoke any specific alcoholic beverage license if it shall determine \textit{for good cause} that the granting or continuance of such license would be contrary to public welfare or morals, or that a person seeking or holding a license has violated any law prohibiting conduct

\begin{itemize}
\item \textsuperscript{3} Cal. Const., art XX §22.
\end{itemize}
involving moral turpitude. It shall be unlawful for any person other than a licensee of said department to manufacture, import or sell alcoholic beverages in this State. [Emphasis added.]

The Legislature gave the Department the responsibility to “ensure a strict, honest, impartial, and uniform administration and enforcement of the liquor laws throughout the State.” In delegating regulatory authority to the Department, the Legislature also provided guidance for overseeing the licensing process. When issuing licenses, the Department may only grant a license if it determines that the license will not be contrary to the “public welfare or morals.” Additionally, the Department is authorized to refuse issuing any retail license for premises located within the immediate vicinity of churches and hospitals. The Department is also specifically authorized to refuse to issue a license for any premises located within 600 feet of “schools and public playgrounds or nonprofit youth facilities, including, but not limited to, facilities serving Girl Scouts, Boy Scouts, or Campfire Girls.” However, this legislative authorization gives the Department the authority, but not the mandate to issue licenses. Therefore, the determination of whether an applicant is within the “immediate vicinity” of a church or hospital lies within the discretion of the Department.

No “Undue Concentration”

State law, however, directs the Department to deny a license if, “issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.” “Undue concentration” is a key standard in evaluating state and local responsibilities in controlling the adverse consequences of alcohol sales. An “undue concentration” exists when an “applicant’s premises are located in a crime reporting district that has a 20 percent or greater number of Reported Crimes...than the average number of reported crimes as determined from all the crime Reporting

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5 Bus. & Prof. Code § 23049.
6 Bus & Prof. Code § 23789.
7 Id.
8 Bus. & Prof. Code §23958.
Districts within the jurisdiction,” or when the census tract in which the applicant’s store is located “exceeds the ratio of on sale retail licenses to population in the county in which the applicant premises are located.” A city may determine that there is an "undue concentration" of off-sale beer and wine licenses in a given location and that the public convenience and necessity would not be served by approval of the proposed license.

Licensee Cannot Conflict with Local Zoning Ordinance

In addition, under Bus & Prof. Code §23790, The Department may not issue a liquor sales license for premises located in an area where the terms of the license conflict with a valid zoning ordinance, unless the following are met: (1) the premises were licensed before adoption of the zoning ordinance, (2) the license will be of the same type and classification as the prior license, and (3) the licensed premises have operated continuously without substantial change in mode or character of operation. Accordingly, a city ordinance denying a use permit for a cocktail bar in a shopping center was upheld because it was supported by findings that the bar would disrupt the peace, health, and general welfare of the people in the area, and more specifically because of the proximity of the bar to surrounding residences. Similarly, a court upheld an ordinance that grandfathered an existing restaurant with only a beer and wine license in a residential zone while barring an expansion of the license to include the sale of distilled liquors. Also, Bus & Prof Code § 23800 authorizes the Department to impose conditions prepared by the Department or requested by a city or county on liquor licensees in certain situations, including the transfer of a license. In fact, license applicants are required to provide a zoning affidavit affirming that issuance of the license will not be contrary to applicable zoning standards. Assuming the license is consistent with local zoning, in order to carry out its mandate to protect the public welfare and morals, the Department is required to conduct a “thorough

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9 Bus. & Prof. Code §23958.4(a).

10 Floresta, Inc. v City Council of the City of San Leandro (1961) 190 Cal.App.2d 599.

investigation” to determine that the license will comply with all statutory criteria for the issuance of a liquor license.12

Department Discretion

However, despite this seemingly clear mandate, the Department tends not to err on the side of the community and issues licenses amidst opposition from local government and community leaders. In such instances the Department’s broad discretion can undermine a local jurisdiction’s ability to manage alcohol related social and police problems. In practice, it is also difficult to overturn a decision of the Department. While the Department may delegate the power to hear from all parties and decide a licensing question to an Administrative Law Judge, the Department must render the final decision: whether it is to adopt the recommendation of the Administrative Law Judge, or to render a decision notwithstanding the Administrative Law Judge’s recommendation.13

If a party seeks to challenge a decision by the Department regarding its decision on a liquor license, the petitioner must bring its challenge before the Alcoholic Beverage Control Appeals Board (“Appeals Board”) to determine whether there is substantial evidence to reasonably support the findings of the Department. However, the Appeals Board “will indulge all legitimate inferences in support of the Department’s determination.”14 If, after reviewing the Department’s decision, the Appeals Board determines there is substantial evidence in the record to support the Department’s decision, the Appeals Board will uphold the Department’s decision. The courts will also review the Department’s decisions under the same standard of review.15 However, such review is wholly discretionary with the court and the courts are under no obligation to accept such cases. There is, therefore, no guarantee that the Department’s decisions

12 Bus. & Prof. Code §23958.
13 Bus. & Prof. Code §24210.
15 Bus. & Prof. Code § 23090.2.
will be subject to judicial review. As a result, this deferential standard of review protects the Department's interpretations and decisions with regard to fulfilling its statutory mandate.

A local agency may also file accusations against license holders with the Department. The Department then has discretion to decide whether to proceed with a formal accusation against a license holder. The grounds for suspension or revocation are that the continuance of the license would be contrary to public welfare or morals; the licensee failed to take reasonable steps to correct objectionable conditions on the licensee's premises or immediately surrounding area including public sidewalks and streets within 20 feet of premises; or the failure to abate nuisances, such as disturbance of the peace, public drunkenness, drinking in public and harassment to passersby, after notification by the city attorney. Reasonable steps are defined as timely calls to law enforcement asking for assistance in abating nuisance conditions, asking persons engaging in nuisance activities to cease such activities and the removal of items that facilitate nuisances, such as furniture. Courts have ruled that the existence of a public nuisance, regardless of fault by the license holder, may support the revocation of a license.

Business and Professions Code section 24203 also provides that "accusations may be filed with the Department by the legislative body... of any city... requesting the suspension or revocation of a retail license. Upon the filing of the accusation, the Department shall provide for a public hearing... and determine whether or not the license should be revoked or suspended." Furthermore, if the local legislative body certifies that "the public safety, health, or welfare requires immediate hearing of the accusation; the public hearing shall be held within 60 days after the filing of the accusations with the Department." Using this provision allows the city to directly file an accusation against a license holder and entitles the city to a hearing in front of the

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16 Bus. & Prof. Code §24201.
17 Bus. & Prof. Code §24200.
18 Id.
20 Bus. & Prof. Code §24203.
Department to determine whether or not to revoke or suspend a liquor license. The Department does not have discretion to deny a hearing if it is requested by the City Council.\(^{21}\)

This course of action, however, like the original license issuance decision also places a great deal of discretion in the hands of the Department. Moreover, as with other Department decisions, the Department's decision is difficult to overturn through a legal challenge. In order to successfully proceed with an accusation against a license holder, a city will have to accumulate substantial evidence that a license holder is creating a public nuisance or creating a law enforcement problem as a result of its sale of liquor.

**Miscellaneous Local Regulation**

Lastly, cities retain limited authority to regulate the consumption of alcoholic beverages.\(^{22}\) Regulation of mere possession of alcohol, however, is unconstitutional absent specific legislative authorization.\(^{23}\) Penal Code Section §647(e), however, authorizes city regulation of possession of open container on certain licensed premises, and Bus & P C §25620 authorizing city regulation of open container in city-owned public place. Cities also have limited authority to regulate the concurrent sale of gasoline and beer or wine at a given location as defined by statute.\(^{24}\)

**III. Nuisance Regulation**

A city can exert a certain degree of control over alcohol outlets through its inherent authority to regulate nuisances. A city can adopt an ordinance directed at the abatement of potential nuisance activity around businesses that sell alcoholic beverages, even though such adopted regulations may in fact prohibit the sale of alcohol at particular locations.\(^{25}\) The right to

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\(^{21}\) Id.


\(^{24}\) Bus. & Prof. Code §23790.5.

control and abate nuisance and criminal activities by ordinance applies to all alcoholic beverage establishments, including those in operation before an ordinance’s effective date.

**Traditional Nuisance Abatement**

Cities may also regulate alcohol outlets on an individual basis through the traditional nuisance abatement authority by declaring a building or place where liquor is unlawfully sold a public nuisance.\(^{26}\) The Unlawful Liquor Sale Abatement Law (Pen Code §§ 11200 – 11207) provides cities with the ability to declare and abate a nuisance when an establishment is selling liquor unlawfully.\(^{27}\) Recently, the Second Appellate District upheld a permanent injunction against a café that was found to be unlawfully selling alcohol to its patrons.\(^{28}\) The City of Los Angeles sought and obtained an injunction against a café that was selling alcohol to visibly intoxicated patrons based on a finding of nuisance under the Unlawful Liquor Sale Abatement Law.\(^{29}\) In upholding the injunction, the Court of Appeal stated that Penal Code section 11200 has a broad reach which encompasses unlicensed liquor sales and unlawful sales, even if lawful sales also occur on the premises.\(^{30}\) Thus, if a city finds that off-sale alcohol sales establishments are violating laws, and they have a negative effect on the health, safety, and general welfare of those living and working in the area, one available course of action is to declare the activity a public nuisance. The city attorney may then maintain an action to abate and prevent the nuisance.\(^{31}\) However, this approach is time intensive and must regulate problem alcohol outlets on a case by case basis.

\(^{26}\) Pen C §11200.

\(^{27}\) Pen C § 11200-11207.


\(^{29}\) Id.

\(^{30}\) Id. at 1141-1144.

\(^{31}\) Pen C §§11200-11201.
The City of Oakland “Deemed Approved” Model

The City of Oakland ("Oakland") tested the limits of the state preemption issue by instituting a “deemed approved” program for existing licensees. Oakland’s program was created as a means of imposing operating standards on legal nonconforming retail alcohol outlets established prior to adoption of the Oakland’s conditional use permit requirements. As part of its program, Oakland adopted a comprehensive code enforcement scheme that the California Court of Appeals has upheld as a permissible use of a city's police power and authority to regulate nuisances and criminal activities in the areas surrounding alcoholic beverage retail sellers. 32

Oakland’s ordinance was challenged as to whether it could apply its deemed approved program to licensees that had sold liquor prior to the adoption of the ordinance. Specifically, at issue was whether the deemed approved ordinance violated Business and Professions Code section 23790, which prohibits new zoning regulations barring the sale of liquor at a site from being applied to “grandfathered” establishments. The court ruled that the regulations were not intended to control the sale of alcoholic beverages, but instead were intended to eliminate nuisance and criminal activities. 33 Although the ordinance did not prohibit licensees from selling alcoholic beverages, it did prevent licensees from creating nuisances and facilitating criminal activity at their stores and in the surrounding areas.

The Oakland Ordinance establishes that the sale of alcoholic beverages in Oakland is deemed to be an approved commercial activity, so long as the seller complies with the “Deemed Approved Performance Standards.” The performance standards require that the sale of liquor at a site does not:

1. result in adverse effects to the health, peace, and safety of persons residing or working in the surrounding areas;

2. jeopardize or endanger the public health or safety of persons working in or residing in the

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33 Id. at 765.
surrounding area;

3. result in repeated nuisance activities within the premises or close proximity of the premises, including but not limited to illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, the sale of stolen goods, public urination, thefts, assaults, littering, loitering, police detentions, arrests;

4. violate any city, state, or federal regulation, ordinance, or statute; or

5. have upkeep or operating characteristics that are incompatible with the surrounding area or adversely affect the liability of appropriate development of abutting properties.\textsuperscript{34}

If the sale of liquor causes a violation of one of the established performance standards, then an administrative hearing is held to review the complaint. Complaints can come from the police department or the general public. The administrative hearing officer then holds a hearing to determine whether the standards have been violated, and at that point, may impose conditions on the merchant in order to enforce the Deemed Approved standards. If the merchant violates those conditions, the Deemed Approved status may be revoked. Once appeals of the administrative hearing officer's decision to the city council are exhausted, the City may seek to have the activity abated as a nuisance. The City may also refer the matter to the Department for revocation of the liquor license. Lastly, to pay for the enforcement of the ordinance, Oakland imposes a $600 fee on liquor licensees.

Violations of the ordinance do not result in the forfeiture of the merchant's liquor license, because only the Department has the constitutional authority to revoke a liquor license. A violation, however, does prevent the merchant from selling liquor at the location where the violation occurred. Furthermore, violations can be forwarded to the Department for possible revocation.

\textsuperscript{34} \textit{City of Oakland Deemed Approved Alcoholic Beverage Sale Regulations}, Title 17 Planning, §§17.156 et seq.
IV. Regulation through Local Zoning Ordinance

The Department of Alcoholic Beverage Control may not issue an alcoholic beverage retail license for any business located in a zone where the exercise of the rights conferred by that license would be contrary to a valid local zoning ordinance. When enacting a zoning ordinance, a key distinction involves the status of the specific licensed premise as a “new” or “pre-existing” outlet at the time a city enacts a new ordinance or regulation. A retailer whose business is already in place receives far greater protection under state law than outlets that are proposed following enactment of a valid zoning ordinance. Thus, a city that wants to restrict alcohol outlets from locating near schools cannot impose the new restriction on an existing outlet, but can prohibit a new outlet from locating in the restricted zone or selling a restricted product.

Los Angeles’ Ordinance

In an attempt to define the limitations local government may impose on alcohol-serving establishments, courts have consistently held that local ordinances that do not directly affect the sale of alcohol are not preempted by the powers granted to the Department. In 1994, in Korean American Legal Advocacy Foundation v. City of Los Angeles, the California Court of Appeal examined the extent to which the state had preempted the field of alcohol regulation. The case was set against the backdrop of the 1992 Los Angeles riots and the effort to rebuild stores destroyed during that period of civil unrest. Since 1985, the City of Los Angeles had required business engaged in the sale of off-site alcoholic beverages to obtain conditional use permits. In 1987, the city adopted a specific plan, which required conditional use approvals for establishments dispensing alcohol in South Central Los Angeles, and provided that approval was contingent on specified findings. Businesses in operation before the effective dates of either ordinance enjoyed “deemed approved” conditional use status. In the aftermath of the riots, the city adopted ordinances to facilitate rebuilding, with expedited procedures to process building permits.

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36 Bus. & Prof. Code § 23790
permits in conformity with existing code provisions. However, all conditional uses, including conditional uses selling alcoholic beverages for off-site consumption, had to submit plans for approval before rebuilding. Such approval could be made contingent on conditions (such as graffiti removal, adequate lighting, trash removal, security guards and limited hours of operation) imposed on the same basis as for new conditional uses. In addition to the plan approval process, the city instituted “revocation hearings” to revoke or condition an owner’s deemed approved status or use permit in the event the business threatened to become, or had become, a nuisance or law enforcement problem. The plaintiffs, many of whom had stores destroyed during the riots, brought suit, challenging the validity of the ordinance imposing the plan approval process and establishing revocation hearings. They alleged that Los Angeles’ plan approval and revocation processes were completely preempted by the state constitution, which specified that the state had exclusive authority to regulate the sale of alcoholic beverages and exercised this exclusive jurisdiction through the Alcoholic Beverage Control Act. 38

In addressing the preemption challenge, the court examined the purpose of the ordinance and noted that the conditions imposed by the city did not have the effect, either direct or indirect, of regulating the “manufacture, sale, purchase, possession or transportation” of alcoholic beverages. 39 Rather, the conditions imposed under the plan approval process were aimed at controlling or eradicating the negative secondary impacts often associated with establishments that sell alcoholic beverages. 40 Accordingly, the ordinance was deemed permissible as it was aimed at land use and zoning - to abate or eradicate nuisance activities in a particular geographic area by imposing conditions aimed at mitigating those effects - rather than the regulation of alcohol. The validity of the ordinance was underscored by the fact it focused on the negative conduct occurring in the immediate vicinity of businesses selling alcohol for off-site consumption; “[t]hat the conditions imposed under the ordinance may have some indirect impact on the sale of alcoholic beverages does not transmute the purpose and scope of the ordinance into

38 Id. at 385.
39 Id. at 385-87.
40 Id. at 387.
a regulations merely seeking to control alcohol sales.” Thus, provided that an ordinance imposes land use and zoning regulations, and applies them properly, the zoning regulation should be valid.

V. Recommended Practices

Any local zoning ordinance aimed at regulating retail alcohol outlets should comprehensively seek to regulate, by including both conditional use permit (“CUP”) and Deemed Approved provisions. By including both of these provisions, the city will properly distinguish between pre-existing and new alcohol outlets. Both of these provisions are also flexible enough to vary according to each city’s needs. The recommended approach for regulating pre-existing alcohol outlets, both for on-sale and off-sale outlets is the Oakland Deemed Approved model, as described above. This provides a city with as much regulatory control over existing outlets as is permissible under the state statutory framework. Further, this approach has been upheld by courts as valid.

Findings and Statement of Purpose

The ordinance should contain specific findings that will give the proper justification for any conditions and/or operating standards that are imposed. As is the case with other conditions imposed on a property, the conditions imposed must be related to the goals of the ordinance. The findings establish the need for the ordinance, listing the specific problems that are to be alleviated. These should be adapted to local circumstances, including any local data regarding alcohol problems and their link to retail alcohol sales. The purposes section can augment the findings from the introductory section, such as focusing on the rationale for requiring CUPs for new alcohol outlets. Carefully drafted findings and purpose sections are important to establish the city’s rationale and authority to take action.

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41 Id.
Regulation of Retail Outlet Locations

The Department may not issue alcohol licenses for premises located in the immediate vicinity of churches and hospitals. In addition to the state law restrictions concerning location of outlets near those sensitive uses, a local ordinance can further restrict outlet locations through a valid zoning ordinance. Zoning ordinance restrictions regarding the location of outlets could restrict the outlets to certain zones, by defining the alcohol sales use and then restrict alcohol outlets from a zone within the city’s zoning ordinance, such as residential zones. Conversely, the ordinance could restrict alcohol outlets only to certain commercial zones. In addition, the adopted ordinance may want to require spacing requirements by imposing specific distances from sensitive uses, such as playgrounds, schools, hospitals, high crime districts, etc. Lastly, the ordinance could require distance requirements between outlets. For example, no more than four alcohol retail outlets can be allowed within a 1,000 foot radius of each other. The location requirements may also choose to focus on particular types of alcohol outlets. For example, restaurants or grocery stores with relatively limited alcohol sales may be treated differently from bars, nightclubs, or liquor stores.

Conditional Use Permit Provisions

An ordinance containing CUP provisions is an effective tool for local regulation of retail alcohol outlets. When regulating new outlets, establishing specific CUP provisions is the most effective method to impose local conditions and sanction those that do not comply with the enacted conditions. Additionally, the CUP allows cities to take much swifter action than if a city was forced to rely on the Department to take action. Lastly, the CUP provides individuals and groups within the community a voice in the decision-making process with respect to how proposed retail alcohol outlets would impact the community.

Any adopted CUP ordinance must be cognizant of the areas upon which state law has exclusive jurisdiction which is, “the manufacture, sale, purchase, possession and transportation of alcoholic beverages.” However, when acting within those restrictions, a city can properly adopt and enforce operating restrictions that will meet the particular needs of its communities.

42 Bus. & Prof Code § 23789.
43 Cal Const. Art. XX, § 22.
Operational standards and conditions of approval can work in conjunction to comprehensively regulate new outlets. Operational standards are mandatory requirements that apply to all outlets, are typically general in nature, and can often be similar to the Deemed Approved operating standards. For example, operating standards can have restrictions against public nuisance activities and activities that violate state or local laws.

Although related to operating standards, conditions of approval are more specific and should be tailored to local issues. The conditions can be either standard or discretionary. If standard, they apply to all new outlets automatically; if discretionary, the permitting agency considers their applicability on a case-by-case basis and tailored to the specific application and the surrounding neighborhood. Erring on the side of over inclusion is recommended; if it is uncertain whether a given condition is relevant, it can be treated as discretionary and used only if warranted for particular retail outlets. Some conditions to consider are as follows:

- Soundwalls
- Prohibited Products
- Graffiti Removal
- Chilled Alcoholic Beverages
- Exterior Lighting
- Hours of Operation
- Trash Receptacles
- Paper or Plastic Cups
- Pay Telephones
- Size of alcohol signage
- Complaint Response – Community Relations Program
- Loitering
- Prohibited Activities (e.g. pool tables)
- Security Cameras
- Prohibited Vegetation
- Limitations on signs and advertising on windows of doors in off-sale outlet

Provisions Specific to On-Sale Outlets

Although the regulatory framework for on-sale and off-sale alcohol outlets are the same, on-sale outlets can present different issues than off-sale outlets. Because of this variation, cities may want to consider specific regulation for on-sale outlets. For example, nightclubs present operational issues that regulations tailored to liquor stores may not adequately cover. Operating hours restrictions would presumably be different for nightclubs. Additionally, requiring security and noise restrictions for nightclubs is also recommended.
Some cities have a cluster of on-sale outlets within one area that becomes a focal point for entertainment and tourism. Whether a city desires this “entertainment zone” or not, when such zones emerge, including additional provisions for those zones may help to minimize some of the impacts from several inebriated customers streaming out of closing bars all at once. Additionally, some potential conditions for Entertainment Zones could be restricting the number of alcohol licenses within a defined zone and prohibition of transferring a permit from one zone to another zone.

Other on-sale outlets that may present unique issues are restaurants. Cities may want to consider whether or not to include “full service restaurants” as an outlet subject to the CUP ordinance. Some cities, for example, exclude restaurants from their ordinances, provided that they meet strict criteria in terms of food sales, hours of operation, kitchen facilities, among other factors, to ensure that a restaurant does not transform into a more problematic mode of business. Regardless of a city’s desire to subject a full service restaurant to CUP ordinance regulations, the ordinance’s definitions should clearly define what constitutes a full service restaurant. Adopting restaurant specific operational requirements can prevent businesses from opening under the guise of a full service restaurant, but not actually operating as such, and in effect operate as a bar with little regulatory oversight. Some options for regulating restaurants include: treating restaurants similarly to other types of outlets; exempting them from the ordinance entirely; or developing separate standards applicable to restaurants.

Additional Ordinance Considerations

Some jurisdictions also charge an annual business license renewal fee to any bar, nightclub, restaurant, or grocery store permitted by the state to sell alcohol. The money generated pays for police officer(s) assigned to moderate the excesses associated with the sale of alcohol. If the exaction is imposed as a "fee," rather than a tax or an assessment, no election is required. Businesses that will likely generate more police response would pay more than those that do not. For example, large nightclubs with dance permits that stay open until 2:30 a.m. pay around $1,700 per year, and small corner markets that sell beer and wine would pay close to $300 per year.
VI. Conclusion

While the State has express authority over the licensing and regulation of alcohol sales, local governments retain the right, under the police power, to regulate the impact of alcohol availability on the public health, safety and welfare of the community. When the existence of licensed alcoholic beverage establishments creates negative secondary impacts, local governments must continue to address these impacts while not treading in the exclusive area of the State’s authority.

Although there are limited opportunities for cities to play a role in the state regulatory process, cities can nonetheless use their land use and police powers to exert control over retail alcohol outlets. When regulating pursuant to land use and/or police power authority, cities are able to employ a strategic approach to managing alcohol sales and affiliated issues. Any adopted ordinance should distinguish between pre-existing outlets and new outlets, with the deemed approved program and conditional use permit requirements.

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REPORT AND RECOMMENDATION
TO THE EL CAJON CITY COUNCIL
June 28, 2011

TO: Honorable Mayor Mark Lewis
Mayor ProTem Bob McClellan
Council Member Gary Kendrick
Council Member Bill Wells
CITY OF EL CAJON

FROM: Council Member Jillian Hanson-Cox (and)
El Cajon’s Alliance for a Better Community Task Force

I am happy to present the following written report:

INTRODUCTION:

History:

September 2009, 2nd Street businesses contacted El Cajon Police Department for assistance in public drunkenness and aggressive panhandling around their establishments. Officer Dan Hansen contacted IPS (Institute for Public Strategies) to conduct a survey on 2nd Street to compile data to identify areas of major concerns for corrective measures. Councilmember Jillian Hanson-Cox was contacted by businessman Garry Davis, representing 2nd Street Alliance for a Better Community, in February 2010 to participate in the roundtable discussions for possible solutions.

Complaint:

2nd Street businesses attended Council Meeting in January 2011 to express their concerns for an agenda item regarding an establishment on 2nd Street requesting a CUP that would exceed the City of El Cajon’s limit of establishments, in the specified (sector) area, in selling alcoholic beverages. The business group (2nd Street ABC) believed that “over allowance” issuances of these CUP’s in sector areas were contributing to public drunkenness within the city limits that was impacting businesses and shoppers.

Action:

Councilmember Gary Kendrick brought forward a recommendation for Council on January 25, 2011 to consider an ordinance banning the sale of single serving alcoholic beverages and fortified beer, wine, and alcoholic energy drinks, from off-sale premises.

Councilmember Jillian Hanson-Cox mentioned that she was currently working with businesses regarding this situation and asked for the City Council to delay their vote on this recommended ordinance for six months. City Council granted Councilmember Hanson-Cox the time to develop solutions with a task force.
A task force was established "El Cajon Alliance for a Better Community" that included the following members:

Jillian Hanson-Cox, Council Member - City of El Cajon  
Captain Jim Redman, El Cajon Police Department  
Ramzi Murad, Neighborhood Market Association  
Samantha Dabish, Neighborhood Market Association  
Don Tendvahl, East County Transitional Living Center  
Sean Oliver, East County Transitional Living Center  
Joseph Eberstein, Institute of Public Strategies  
Dana Stevens, Communities Against Substance Abuse  
Garry Davis, 2nd Street Alliance for a Better Community  
Arkan Somo, Arkan Somo and Associates

WORK ESTABLISHED

The task force met numerous times preparing a plan, timeline, and short-term goals to meet council's directive.

Extensive time and efforts on all task force members were focused in the following areas:

1) Continuous data gathering by IPS
   a) Shopper perception
   b) Employee perception
   c) Neighborhood perception

2) Identify issues of concern that resulted in complaints from residents, shoppers, and local business owners about nuisance and criminal activities around off-sale premises:
   - Public drunkenness
   - Disturbance of the Peace
   - Littering
   - Panhandling and aggressive panhandling
   - Loitering
   - Theft
   - Drug dealing
   - Harassment of passerby
   - Assaults
   - Urinating in Public
   - And other behaviors that negatively impact local businesses and surrounding neighborhoods

3) Develop a presentation and tools (items and services provided by participating task force members) for off-sale alcohol businesses to use to assist them to be good neighbors, and increase their business.

4) Develop a partnership program that includes a "Voluntary Good Business Neighbor Pledge". This pledge also includes other miscellaneous items such as noise, public space and trash, etc.

5) Communicate with all off-sale alcohol businesses within the city limit by mail and personal contact (twice) to express the importance for their participation in becoming partners in assisting with resolving issues that were identified by task force.
Two presentations were given (May 17th and June 13th) at the Ronald Reagan Community Center that comprised of a power point presentation, and speaking points by all task force members to attendees.

Results

- Ninety-two (92) off-sales alcohol retailers within the City of El Cajon limits were contacted (list taken from Alcohol Beverage Control on-line).

They comprised of:
- 74 small businesses
- 18 large business chains (ie: CVC, Walmart, Target, large grocery store chains, etc.)

Businesses represented at presentations (total of both):
- 56 out of 74 small businesses (= 76%)
- 0 out of 18 large chain businesses

- Forty-one (41) out of fifty-six (56) small businesses (= 73%) turned in a “Voluntary Good Business Neighbor Pledge” to-date. We are aware that there are more being mailed in direct to the El Cajon Police Dept.

- Many of the same businesses have also turned in a signed:
  a) Illegal Lodging Enforcement Letter
  b) Request for Permission to Remove Graffiti on Private Property

CONCLUSION

Since the partnership inception on May 17, 2011, the data gathered by IPS shows that residents, shoppers, and businesses perception of troublesome nuisances (mainly drunkenness and aggressive panhandling) have decreased from 67% in September 2009 to 12% on June 22, 2011 along 2nd Street alone.- proving our plan/program is working.

Jennifer Hill with ABC (Alcoholic Beverage Control) praised the task force for developing a successful partnership program that was perceived very positive, and much appreciated, among the off-sale alcohol businesses during the first presentation.

Therefore, based on the hard work and successes that the task force has incurred to-date with our “partnership program”, we do not believe that it is necessary for the City Council to enact an ordinance.

The task force will continue to monitor the results of this partnership program within the “entire” city limits. We also plan to expand this program to on-sale alcohol businesses, and develop a similar program for non-alcohol businesses as well in regards to noise, litter, and graffiti.

Enclosed:
- Off-Sale Retailer Presentation (Packet)
- Voluntary Good Business Neighbor Pledge
- Illegal Lodging Enforcement Letter
- Request for Permission to Remove Graffiti on Private Property
MINUTES

PLANNING COMMISSION MEETING

May 6, 2013

The meeting of the El Cajon Planning Commission was called to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE

COMMISSIONERS PRESENT: Anthony SOTTILE, Chairman
Star BALES
Paul CIRCO, Vice Chairman
Adel DANKHA

COMMISSIONERS ABSENT: Darrin J. MROZ

STAFF PRESENT: Manjeet RANU, Planning Manager / Planning Commission Secretary
Michael REID, Staff Attorney
Tony SHUTE, Senior Planner
Ron Luis VALLES, Administrative Secretary

SOTTILE explained the mission of the Planning Commission.

CONSENT CALENDAR
Motion was made by BALES, seconded by CIRCO, to adopt the minutes of the Planning Commission meeting held on March 11, 2013; carried 4-0.

PUBLIC HEARING ITEMS
There were none.

STAFF COMMUNICATIONS

AGENDA ITEM NO. 2 – ALCOHOL SALES LAND USE ORDINANCE – AMENDMENT OF ZONING CODE NO. 423

The Planning Commission was presented with the City Council’s direction, background information, project schedule, proposed ordinance structure and opportunities for community input regarding off-sale alcohol outlets and their associated effects. This was an information item only. Public testimony was given, but the Planning Commission did not take action at this meeting.
In a PowerPoint presentation, SHUTE summarized the staff report.

SOTTILE commented that other municipalities, such as the County, Encinitas and Escondido, have reached their limits on overconcentration of the number of beer and wine licenses.

SHUTE referred to the statute where cities that have more than one Type 20 License for every 2,500 people are considered to be in a moratorium. Currently the City of El Cajon is within that moratorium by one to two licenses.

CIRCO asked if staff could update or provide a map showing on-sale outlets to see if there are similar correlations within the 600 foot buffer of alcohol related arrests to off-sale outlets. He does not like to differentiate between on-sale and off-sale locations.

SHUTE advised that they could change the background on the map to make it more legible for the Commissioners. However, the City Council had directed staff to focus their attention on the sale of off-sale Type 20 and Type 21 outlets.

SOTTILE mentioned the business owners gathering to implement a self-policing situation that the Council agreed to for a six month period to see what would occur. There were great results initially, but since then results have slipped back and he asked if staff knew the reason for the slippage.

SHUTE deferred to Chief Jim REDMAN, who was in the audience to answer any questions.

REDMAN explained that in 2011 they started the community program and asked all liquor store and market owners to come together and sign a volunteer pledge, which was non-binding, to police themselves and refrain from selling alcohol to serial inebriates. These people are the number one complaint in the Police Department. The program lasted about five to six months before things started slipping back to normal as shown by the increase in crime statistics for public drunkenness and alcohol related offenses. He added that a valiant effort was made, but did not work because there was no penalty for violating the rules. Unless some way is established to enforce the rules these issues would slip back to the norm.

BALES asked for an explanation of the small bottles of alcohol which seem to be creating the most problems.

REDMAN answered that they are called airline bottles because they are the type sold on airlines. These small bottles of hard liquor are sold very cheap for $.99 each. Because of the price and high proof content they are the alcohol of choice for transients or a person who is a chronic alcoholic. Then it becomes a police concern. Single serve beer and cheap fortified wines are also a problem.
SOTTILE asked what procedures were in place by the Police Department to deal with these types of issues.

REDMAN explained that they go to jail. The District Attorney is allowing them six offenses and then they are released when sobered up. But on their sixth offense they can actually receive longer jail time. However this could be over a four to six month period, sometimes even a year. It is a never ending cycle and the Police Department is seeking better ideas to deal with this problem. If a limit could be put in place to the access to alcohol, it would be a step in the right direction.

SOTTILE asked if this process was also in place for drug arrests, prostitution, etc.

REDMAN answered that all these offenses are associated with alcohol problems, as well as petty theft, vandalism and public urination, and involves the same people they deal with that are the chronic drunks. The number two complaint is traffic and the number three complaint is gangs.

SOTTILE asked if there was an increase in gang activity with adults buying alcohol for them.

REDMAN answered that they have not seen any connection with gang activity to the extent they see with the transients.

BALES asked if there was anything else that contributed to crimes besides selling small bottles and if there was anything they could put into place to help the situation.

REDMAN answered there were things that could be put into place to prevent panhandling and the Police are working on ideas in this arena. One solution would be to prevent them from getting the money they use to buy the alcohol.

SOTTILE mentioned that he believes most of these people do not want help.

REDMAN added that with most of the 100 transients and homeless in El Cajon that they deal with on a daily basis, 40 of these are chronic drunks and they do not want any help.

SHUTE then summarized by stating there would be a work session on the draft ordinance which would then go back to the Commission and on to the City Council for approval.

RANU interjected that the Council identified issues with off-sale of alcohol from the crime and recent activities, including the burden it has on municipal services; primarily Police, and the feedback received from constituents who attended the Police Department community forums. The approach the Council had decided to take is a comprehensive view where we deal with land use regulations that are applicable to existing off-sale outlets, as well as those that will come in the future. So the focus right now is on the off-sale of alcohol at smaller markets because that is where the criminal activities are primarily conducted based on the data. In the meantime, the Council had communicated with the markets at their February meeting that it will take several months to work through this process, so
there is an opportunity for these markets to voluntarily police themselves again as they did several years ago. After evaluation of how well that voluntary process is working, the Council can then determine what kind of regulations they might want to put in place. The purpose of this meeting today is to introduce the identified issues to the public, who will have the opportunity to provide testimony as well.

SOTTILE confirmed with RANU that this meeting was not a public hearing however public comments on the proposed regulations would be heard.

CIRCO mentioned that the deemed approved language sounded like it was a retroactive conditional use permit (CUP) and asked how it would affect the grandfathered alcohol outlets.

SHUTE replied that it would directly affect the grandfathered locations. The deemed approved means granting a CUP to those outlets who currently do not have a CUP and to those that do have a CUP, but are legal non-conforming is some manner. An example would be an outlet that may not meet the distance requirements that are currently within the code. What’s being granted is their ability to use their land as an alcohol outlet under the land use authority for sale of beer, wine or liquor, which they already have as grandfathered. This is a measure that the City can apply as a blanket CUP which would give the City local control over the land which it does not currently have.

RANU added that this is the key point of local control because the City does not have any authority over the issuances of licenses, which are handled by the State. But, the City does have land use control, and for those outlets which are not operating under a CUP today, or are non-conforming is some way, by making them a deemed approved location, then if issues arise, would have the ability to revoke that land use approval and either shut them down or impose additional operational conditions upon them. It is an opportunity for the City to take control of regulating the sale of alcohol through its land use authority.

CIRCO confirmed with Staff that about 75% of the current small markets selling alcohol are non-conforming.

SOTTILE opened the floor for public comment.

Rick SWEENEY, representing Downtown El Cajon Business Partners, spoke first in support of restrictions. He requested consideration of restrictions of off-sale alcohol sales within the downtown area. He added that the merchants, businesses and City have worked hard over the past two decades to improve the business atmosphere of downtown El Cajon with public improvements, i.e., lighting, way finding signs, landscaping, and common traffic improvements. Individual property owners have invested as well in façade improvements, interior improvements and creation of their own assessment district. All this work had been conducted to create a destination for shoppers and their families. Off-site alcohol outlets in the district are not conducive to the goal of their stakeholders, merchants and the City. The downtown merchants, who must compete with other family-oriented shopping clusters, i.e., Parkway Plaza and Grossmont Mall, would like the same playing field as these businesses.
SOTTILE confirmed with SWEENEY that the Downtown Business Partners are for greater restrictions and agreed that those proposed would improve the business climate.

SWEENEY agreed that it would help generate an overall family destination point they were hoping downtown El Cajon would become and they have been working toward this goal.

SHUTE added that the downtown area is governed by Specific Plan 182 (SP 182), which currently prohibits off-sale outlets, and the Downtown Partner’s boundaries are within that area. There is no proposal to change SP 182, so currently alcohol outlets are not allowed.

Mark ARABO, President of the Neighborhood Market Association, spoke next. He thanked City staff, the Commissioners and Chief Redman on all the hard work done to date and handed to REID a handout for the Commissioners of the signs that they have put in place. He added that he again is reaching out to the City to develop a partnership. They have worked very hard throughout the community and with the Police Department and have drafted some changes. One change is they have asked every store to voluntarily take down all their advertisements for liquor and beer, and they complied. They also solicited community input on people loitering and panhandling, whereby every store voluntarily installed a sign to deter this behavior. They held four different seminars with their members to come up with ways to make El Cajon a safe place for all, including their workers, to be able to come and go in the mornings and evenings in a safe environment. He shared that they changed their lighting and cleaned up the parking lots and have a hot line set up where authorities can be called if problems arise. The biggest issue they had was the changing of the status of the grandfather clause. He believed it would open up the City to possible lawsuits. Their 79 merchants have the legal right to do things in their stores, which they have been doing, and are not creating any public safety issues in this regard. They believe the City is targeting them and not including bars and restaurants. They want to work with the City in partnership and have taken considerable significant steps forward. Every store has the sign up and are enforcing the do not sell list. All advertising of beer, wine and liquor have been removed from the windows voluntarily. All of these changes were accomplished without passing new laws. They support an education program and working with the community and the Police Department.

SOTTILE asked if he agreed that reducing panhandling, public drunkenness, prostitution, etc. would be beneficial for all businesses no matter what part of the community these problems may exist.

ARABO agreed that panhandling and loitering should not exist, which is why they created the signs voluntarily. He again charged that to blame compliance on liquor store owners or single out some businesses in the community is wrong.

SOTTILE added that the signs were great, however asked what would be the process if a person did not comply.

ARABO answered, they would then target them with the help of the Police Department. However, they have not had any problems in this area.
SOTTILE reminded him that the Police Chief stated these issues are a revolving door. These people get processed and then they go back on the street. The City is trying to propose regulation which possibly might put an end to the revolving door.

ARABO believed the opposite would occur. In explanation he said to ban shots and half pints would be a mistake because then people would purchase the one-half gallon bottles at a cost of $3.00. He advocated a community effort, not to only target liquor stores or markets. They support the East County Transitional Living Center process and continued community education.

SOTTILE wanted to clear up a statement the speaker made that the City was trying to close down the legal non-conforming stores and asked for clarification from staff.

SHUTE replied that the proposed ordinance is not an attempt to close down an existing business. It puts in place, under deemed approved, a land use control so that if a business is non-compliant and meets the thresholds that would be established in the proposed ordinance of non-compliance, and were then to come to a point where they were not meeting standards, then a hearing process could have their deemed approved CUP revoked.

RANU added that it would apply uniform operating standards to all stores.

ARABO asked about a new fee or tax proposed on small business owners to open and close their stores. Again he felt the City was targeting off-premise Type 20 & 21 stores and not looking at bars and restaurants.

SOTTILE asked staff if there was a fee to be imposed on existing store owners versus only on new businesses.

SHUTE responded that a fee is something staff was looking into with the City Attorney’s office, but as yet not a part of the ordinance.

REID clarified that no fee is proposed yet and it was only an idea at this point. If a fee would be included, it would not be an inappropriate tax, which the City cannot do. If a fee were to be imposed, it would be on all establishments and would be a regulatory fee to cover the City’s cost of enforcing the ordinance. Also, no specific amount had been discussed.

ARABO suggested that the math for 79 outlets for a full time police officer at $100,000 per year, including pension and benefits, divided by 80 equals $1200/year just for cost recovery alone.

SOTTILE added that the fee was an element that they were only thinking about at this time, but if businesses are not abiding by rules and there is a problem, they would try to eliminate the revolving door. Businesses complying with all regulations have nothing to worry about.
CIRCO asked other than the 79 stores associated with the Association, if it governed all small markets and liquor stores in El Cajon.

ARABO answered in the affirmative and reiterated all the good things they have done as a group. He was in support for the City to enforce the laws currently on the books and not pass new regulations.

BALES told ARABO she liked his approach to work with the City and said the Planning Commission was there for the small businesses and all the citizens of El Cajon. She added that she did drive around and looked at the stores with the newly installed signs. She suggested that they might take into consideration possibly doing something more aesthetically pleasing to the exterior of the stores.

ARABO summed up by stating the two areas that they have issues with. One is the grandfather clause issue and the second is the targeting of liquor stores only.

Katherine WEBB, longtime resident, spoke next. She advised that the cross streets of Second and Broadway have an alcohol outlet on every corner. She lives close by and when she goes out to get her morning paper many times has found someone intoxicated laying in her front yard or debris from alcohol consumption. She also mentioned that if you walk down Broadway from Second Street toward Target you can tell you are approaching the few liquor stores along the way by the amount of debris in the parking lots and landscaping at the adjoining businesses. This will not attract any new businesses to El Cajon. She believes the deemed approved proposal puts everybody at the same level to play by the same rules. Rules need to be put in effect to be able to control those individuals. She believes the estimated $100 fee per business is not much and most stores should be able to afford it.

Joe JABORO, owner of Nick’s Liquor, spoke next. “Hello Mr. Commissioners, everybody. My name is Joe Jaboro, I have a liquor store, Nick’s Liquor. Just to give you a little history. I’ve been in this business well over 30 years. I’m 42 years old. I’ve seen a lot… I don’t know where to start, so I’m just going to go back and forth on a lot of issues.

First of all, let’s go back to her [Katherine Webb’s comments] trash and debris… My liquor store, I have a trash can, five feet away, and people still open up their car door, just regular people, not transients, nobody, [they] dump their trash on the floor and they drive away…it’s five feet away. That’s never going to go away, people are people.

Aesthetically, I’ve probably put in the last month over three to four hundred dollars in cleaning up my store; it’s always been a very clean store. But we’ve put new doors, and taken out the signs. My wife has been planting garden bushes all over, and then the next day somebody steals them. Last year, two years ago, I put in copper piping, put in about $300 worth of copper piping, the next day they stole them. I called the cops; of course nothing is going to happen because they can’t find them. Just so you know,
we’ve tried very, very hard, but there’s a lot of things. Our hands are tied. We can’t do anything about it.

Let’s see here; urinating in public. I don’t know about you guys but I’ve driven out [in] the city before trying to look for a bathroom, and unless you go to Jack in the Box or something, nobody is going to let some homeless person into their door, into their home, and use their restroom. I’d like to see a show of hands if anybody is going to do that. Because of course, they are going to steal from you or whatever.

I’ve tried to help these people out as much as I can in my store, you know. There’s good and there’s bad. You can tell who’s good and who’s bad. And again with that, buying alcohol, we have a list of faces for everybody, and we go by that, but there’s people, when we kick them out, they just across the street or 7-11, and they come right back, walking down the street, with their cans of beers in their bag. Either they got them their selves or somebody buys it for them. So, we can only do so much on that.

Do you know why to me, why the crime rate is so high? It’s because, we talk to our customers every day, they don’t have no jobs. It’s very simple. If you don’t have a job, you got to support your family, one way or another, your crime is going to go high. Anywhere….(two words undecipherable)…people steal from there too. I grew up in El Cajon and I’ve been here since I was three years old, I’m 42 years old. So I’ve been out there all my life. I’ve seen it all.

About this single shots, half pints and pints, and, I was here at the last meeting, [red light flashing] sorry but my time is up.”

SOTTILE asked, “Do you need another minute?”

JABORO responded, “Can I?”

SOTTILE answered, “Sure, you can have another minute.”

JABORO continued, “I have a lot of information, but I just want to try to push it real fast. I’m sorry.”

SOTTILE added, “You can have a minute.”

JABORO then continued, “You know, the person I was telling, he said, “Oh, how can a 99 cents shot, put you out of business.” My business is 85 percent or more, of those shots, single cans of beers, and I’m not talking selling to homeless people, these are regular every day people, that come into my store. They come in the store, and their hands are shaking like a leaf, and they have one shot, and they’d be perfect. They’ll come back, two, three hours later, again. The alcohol is like literally medicine for them. And I tell them, why don’t you buy a half pint or a pint? And they say, “Joe, I’ll drink that half pint as fast as I can shop it.” So if I sell them a fifth or half gallon, they can’t stop,
they'll drink it straight down. So what is going to happen now, they're going to get a DUI, they’re going to go out there and kill somebody. So restricting them from buying these little shots, is in, from my perspective, from what I see, is not going to be a good thing. Uhm…”

SOTTILE said, “Sir your time is up”

JABORO added, “I’m sorry. I could go on for hours really. Again, if you would like to come to my store, literally, come to my store, any one of you, any time. My wife’s there seven days a week. I'm there seven days a week. I’ve had three back operations. I still put in seven hours a day or more. So, I'm semi-retired. Just come in and see the people coming in. It's more everyday people, and they just don’t have the money to buy to buy an 18 pack of beer any more. The economy is not there for them.”

SOTTILE thanked JABORA and asked if the Commissioners had any questions. There were none.

JABORO responded, “Thank you.”

Kathy ZEMAN, representing Downtown El Cajon Business Partners, spoke next. Their focus has been to try to make El Cajon as family friendly as possible with the car shows, farmers markets and concerts throughout the summer. They would like to see a buffer between them and the liquor stores. One program they run is the “Clean and Safe” program with involvement of the East County Transitional Living Center. They work at cleaning up after the homeless and helping to move them along and breaking up their encampments. These people may not be buying liquor here, but getting it and bringing it into the district and drinking here. They have been talking to various businesses interested in coming to downtown and it would be more attractive to keep the homeless and debris to a minimum in order to retain businesses for the long term.

Dana STEVENS representing CASA spoke next. They support what staff has presented to address some of the problems associated with alcohol outlets. She suggested considering a fee, however, the cost to the City is much more than $100/month. Research demonstrates the way to hold businesses accountable is by establishing something that they have made an investment in, such as a CUP, and associated fee. In reference to the possible lawsuits brought up earlier, she stated that the Oakland ordinance on deemed approved has been upheld by the courts and there are 20 plus cities in California that currently have the deemed approved ordinance in place successfully. She supported the deemed approved ordinance to bring an even playing field to all, including new stores. She felt self-regulation had not worked in the past. Only 41 of the 79 stores made the pledge to follow the law already in place. She supported the fee for all 79 stores and added that the other 3,000 businesses in the community deserve a healthy, safe environment to conduct their business and to invite the community to come and shop at their stores.

No other members of the public approached the podium to speak.
SOTTILE then asked each of the Commissioners to share their thoughts on the proposed ordinance and public comment.

DANKHA advised it was nice to get a full picture of what was going on in the community. It is very important that all the rules, procedures and laws already in place be followed when alcohol is sold. This would solve many problems.

BALES shared she personally knows many business owners and has watched them build up their businesses over many years, including the long hours they worked. She wants to find common ground to solve the issues identified. She supports keeping lines of communication open.

CIRCO said there have seen quite a few of Type 20 licenses come before the Planning Commission for approval and most have been turned down strictly based upon the moratorium. He mentioned he deals with homeless people on a day-to-day basis in El Cajon as part of his job. No one he deals with on a regular basis is carrying around small bottles of alcohol. They want money to buy a soda or a quart of milk. The big alcohol related problem in El Cajon is vandalism and public nuisance. The homeless have no place to live and there is no enforcement. The proposed ordinance is trying to put teeth into the law where the City would have a remedy whereby if there is a store that’s consistently selling to a persistent drunk, the City will then have recourse. Right now with some of the grandfathered liquor stores there is no means of enforcement. The Neighborhood Market Association has the means to play a valuable role in this and to talk to local liquor stores. The deemed approved would give the City the ability to put more strength into the process. Voluntary is his favorite solution. He would rather see a voluntary effort to enforce laws already in place. He added it is a difficult issue and this is why they take the time to receive the public input.

SOTTILE agreed with all that was said and broke the issue down into two approaches. The micro approach would be to not sell small containers to people inebriated on a consistent level. The macro approach would be an umbrella approach where the City would have the tools to enforce no small containers to be sold. The City is trying to address both and do want the community to police itself, however, he feels enforcement should be in place as well. He does not want those grandfathered to be taken out of business. He wants to see self-policing and if people are not able to police themselves, the City should have the tools to take care of the issues locally like in meetings such as this. He appreciated everyone’s thoughts, especially Mr. ARABOs, and advised that there would be other opportunities where all could come back to discuss the issues in the future.

SHUTE added a working draft should be ready for the June 10 Planning Commission.

SOTTILE invited all to return for the next session.

OTHER ITEMS FOR CONSIDERATION
There were none.

COMMISSIONER REPORTS/COMMENTS
CIRCO asked if in a residential area with a single-family home, a single car driveway and a single curb spot out front, if there was any way to reserve that spot on the curb. RANU responded since it is a public street, there is no way to reserve a spot.

**ADJOURNMENT**

Motion was made by CIRCO, seconded by SOTTILE, to adjourn the meeting of the El Cajon Planning Commission at 8:40 p.m. this 6th day of May, 2013 until May 20, 2013, at 7:00 p.m.; carried 4-0.

___________________________________
Anthony SOTTILE, Chairman

ATTEST:

____________________________
Manjeet RANU, AICP, Secretary
CASA’s Deemed Approved ordinance “Wish List”

Questions: (I’m sorry if you already answered some of these):

- Are you planning to reduce the square footage of retail stores defined in 17.210.030 for CUP, from 15,000 to 10,000 sq ft?
- Are you planning to increase the distance requirements for new off-sale establishments from 600 feet to 1,000 feet of the currently listed sensitive uses?
- Are you considering the definition of “general retail” (which I presuming to by type 21) that there be some % of gross sales of non-alcohol or tobacco products? (We see this condition becoming more popular with on-sale establishments to ensure that they arent’ morphing into bars/night clubs.)

Other potential operating standards that would reduce alcohol related problems:

General off-sale conditions:

- All employees (including management) should be required to demonstrate completion of a state ABC certified training program (they are listed on the ABC website)
- No alcohol displayed within 5 feet of cash register or from door unless it is in a permanently affixed cooler
- No advertisement of alcohol beverages displayed on moveable outdoor display boards (“sandwich” style or black-board style)
- No drive through sale
- No display of alcohol in an ice-tub
- No self-illuminated advertising on windows or exterior of building or interior if visible from outside
- No more than 25% of window area covered
- Employees working after 10 pm shall be at least 21 years of age
- No arcades games
- No cold singles less than 40 oz or 375 ml
- No shot-size bottles (if they must be permitted, then behind the counter only – as described in 17.210.080 but delete method C)
- No wines sold with alcoholic content of >15% ABV except “dinner wines” aged 2-years or longer (type 20 only – except of course, in my dreams)
- No singles sales from manufacturer’s multi-container packaging
- No “walk-in” refrigeration sales
- Max. 10% of retail display area developed to the display & sale of alcoholic beverages
- No automobile repairing/dismantling permitted on or adjacent to the establishment
- Define required lighting standards and max time for dead bulb replacements (bright lights w/directing shields to prevent disturbing residential neighbors
- In a dream world…..I would love to get rid of all fortified wine sales, but not sure it would pass legal muster.
Nuisance activity, within the premises or in close proximity of the premises, should include a comprehensive (rather than general “nuisance”) list of “nuisance activities” but “not limited to,” such as:

- Illegal drug activity
- Public drunkenness,
- Drinking in public
- Harassment of passersby (panhandling),
- Gambling
- Prostitution
- Sale of stolen goods
- Public urination
- Theft
- Assaults
- Batteries
- Acts of vandalism
- Excessive litter
- Loitering
- Graffiti
- Illegal parking
- Excessive loud noises (especially late night or early morning hours)
- Traffic violations
- Curfew violations
- Lewd conduct
- Police detentions
- Arrests

NOTE: all standards/conditions should be posted where visible to patrons.

New or amended permit should be required:

- When there is a change of license type
- When there is any change of ownership (including person-to-person transfer) require “arms-length transaction” similar to current TRL ordinance
- Floor space dedicated to the display and/or sale of alcohol is to be expanded by more than 20%
- Any violations of city, county, state or federal regulation, ordinance, or statute
- To ensure upkeep and operating characteristics are compatible with other land uses in their neighborhood

Additional grounds for permit revocation could include:

- When ABC suspends an outlet’s license more than once (1-time) in a 12-month period
- When the sale of alcohol ceases for 90-calendar days (a new permit would need to be secured)
  (conforms with 17.210.050)

Enforcement, adjudication and appeal process question:

- Will the ordinance fees fund a dedicated enforcement officer? (Please?)
- Will enforcement come through PD or Code Enforcement?
- Will penalties become increasingly severe if violations are not abated prior to a hearing or if there are multiple violations?
- Will multiple violations trigger revocation? (Similar to TRL)
• What body would authorize revocation?
• What will be the defined time period to abate a violation prior to a hearing?
• Will the City Attorney represent the city in hearings? Or?
• Will hearing be conducted by ALJ with legal cost paid by licensee if they lose? (Similar to EC TRL ordinance)
• Will the appeal process go to planning commission or to City Council? Or first to planning and then to council? It would seem that appeals to the Planning Commission would reduce costs to the city and the political pressure on elected council members & mayor. (Thus also reducing the potential of steep campaign investment by industry lobbyists.)
• Will revocation require a court order? Or will the ordinance specify “any other action available to the city” can be taken?

Creative Thinking – Proactive Problem Solving?

The establishment of an Alcohol Outlet Advisory Board (committee/commission...whatever title) that would consist of two local alcohol outlet owners (but not the alcohol lobby), a representative from a community coalition (such as CASA, El Cajon Collaborative, IPS or Second St. ABC), the dedicated alcohol enforcement officer and maybe someone from East County Transitional Living or some other treatment/recovery program (like McAllister or MHS who used to run the SIP).

This group could meet maybe quarterly to review complaints, review new license applications and make recommendations on how to reduce/eliminate problems in or around alcohol outlets. This group could also serve as a complaint response team to assess the nature of the complaint and its validity with the intent to work with owner and neighbors to help resolve or abate the problem/s before it became a violation headed for hearing. This process could help to keep enforcement costs down, give the business owners (particularly the best operators) a voice, and might help licensees to feel they had an opportunity to solve problems.

This concept might also help reduce the opposition from an organized alcohol industry lobby. You may recall NMA at city council asked for a committee, much like what had been previously attempted (but lacked defined purpose, focus or direction).