



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 in 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 in 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 of things happening. There is 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