

City of Hesperia

STAFF REPORT



DATE: March 9, 2017
TO: Planning Commission
FROM: Dave Reno, AICP, Principal Planner
SUBJECT: Deemed Approved Alcohol Sales Ordinance

RECOMMENDED ACTION

It is recommended that the Planning Commission adopt Resolution No. PC-2017-01, recommending that the City Council introduce and place on first reading an ordinance, as amended, to establish deemed approved operating conditions and regulate off-sale alcoholic beverage establishments.

BACKGROUND

In 2015, Councilmember Blewett requested the City Attorney's office to prepare an ordinance that would prohibit the sale of single-serve containers of alcohol. Several cities in California have adopted such bans, including Victorville, San Bernardino, Ontario, Rancho Cucamonga, and Redlands. On July 7, 2015, the City Council considered, but did not adopt an ordinance that would have banned single serve alcohol sales within existing and new off-sale alcohol retailers.

ISSUES/ANALYSIS

Subsequently, the City Attorney's office has drafted a new ordinance, which establishes "deemed approved" operating conditions on all existing off sale retailers. The ordinance will also require a conditional use permit for all new off sale alcohol retailers, which would include a provision to prohibit single serve alcohol sales. Existing alcohol retailers would be able to continue to sell single serve containers, unless they violated the terms of their "deemed approved" operating conditions. In which case, they would be required to apply for a conditional use permit, and then be subject to the limitations on single serve sales.

Single-serve alcoholic beverages are defined as any alcoholic beverage packaged and sold individually as a single serving. This definition excludes multiple cans or bottles packaged together, as well as bottles or containers of wine of at least 750 ml or bottles or containers of distilled spirits of at least 375 ml. Beer kegs, as well as other containers exceeding two gallons, would also be excluded from this definition.

The deemed approved operational standards applicable to existing retailers would include prevention of detrimental activities in the vicinity of the store, including illegal drug activity, prostitution, theft, assault, battery, littering, loitering and public drunkenness. All retailers will also be required to complete an approved course in responsible beverage sales within 60 days of hire for employees hired after the effective date of the ordinance, or within six months for existing employees. The course will have to meet the standards of the California Coordinating Council on Responsible Beverage Service, or other certified licensing body designated by the state.

All new alcohol retailers, as well as any existing retailers who fail to meet the deemed approved operating conditions outlined above, will have to receive approval of a Conditional Use Permit from the Planning Commission. In addition to the deemed approved provisions, other requirements will include:

- No sale of single serve alcoholic beverages will be permitted;
- Enhanced lighting must be installed on the premises and adjacent parking lots;
- No furniture or fixtures that encourage loitering will be permitted, including ashtrays, benches, pay phones or video games;
- No advertising of alcoholic products, tobacco or paraphernalia will be permitted;
- No drug paraphernalia will be permitted to be sold on the premises;
- Posters, signs, racks or vending machines may not obstruct more than 15 percent of the window area.

California Government Code Section 38771 permits the legislative body of a city to declare what constitutes a nuisance. According to California Civil Code Section 3479, a nuisance is “[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway.” When this item is forwarded to the City Council, an additional provision may amend Municipal Code Chapter 8.32 (public nuisances) to include the sale of single serve alcoholic beverages as a public nuisance.

The proposed ordinance would address public nuisances that may arise from the sale of single-serve alcoholic beverages. The article attached as Attachment 1 to this staff report cites studies that demonstrate a link between single-serve alcohol sales and higher gang crime, which in turn interferes with the enjoyment of property nearby and is injurious to the health, safety and welfare of the general public.

On February 18, 2016, the City Council held a workshop to discuss the proposed ordinance. All the City’s off sale license holders were invited to the meeting and attorneys representing some of the liquor store owners provided comments to the City Council. Following that workshop, the revised ordinance was provided to the attorneys and to the High Desert Community Coalition (HDCC), who requested a copy for review.

On January 12, 2017, the Planning Commission held a public hearing on the proposed ordinance. Three people spoke in support of the ordinance. One person, representing liquor store owners, spoke in opposition. This person discussed the potential adverse impacts to the businesses as well as the costs of new regulatory fees and employee training. In addition, three memos from the HDCC are included as Attachment 2.

Following the public hearing, the Commission expressed a number of concerns regarding the costs of compliance, including training for the employees as well as the duty to control illegal activities on the premises. The Commission also commented that single serve beverages are a high percentage of sales and this restriction would harm their businesses. The Commission voted 5-0 to continue the item and permit staff to revise the ordinance.

Staff has made several revisions to address the Commission's concerns:

- The single serve size limitations have been stricken from the ordinance (page 6).
- The measures to discourage loitering have been clarified to reference only the portion of the premises "controlled by the establishment." This means that features controlled by others (such as outdoor dining tables) would not be affected. Also, the duty to discourage loitering by employees of the establishment has been amended to not require action if personal safety would be threatened in making the request (pages 6, 7 and 11).
- The provision prohibiting exterior signs that advertise tobacco or alcohol products has been stricken (page 7).
- The limitation on window coverage had been increased to 33% from 15%, consistent with ABC regulations (page 8).
- The requirement for employee training has been stricken (pages 8 and 11).
- The requirement for security guards has been stricken (page 9).
- The definition of substantial modification to the mode or character of an establishment has been revised to require at least a 25 percent increase in floor or sales area devoted to alcoholic beverages (page 12).

These revisions may reduce the intended effect of the ordinance, which is to enable the City to enact additional sanctions on liquor stores that are not meeting their obligations to control nuisance behaviors on their premises.

FISCAL IMPACT

The ordinance may be enforced administratively or criminally in the same way as any other Municipal Code violation. Administrative citations may be given after reasonable notice.

The City will establish a program and fee schedule to enforce the provisions of this ordinance, primarily through the Police Department. Registration to assure completion of the educational program will be required and inspections by the Police Department will occur on an annual basis.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Article regarding single serve alcoholic beverages
2. Comments from High Desert Community Coalition, dated December 9, 2016, January 10 and 12, 2017
3. Resolution No. PC-2017-01
4. Draft Ordinance No. 2017-03