

City of Hesperia

STAFF REPORT



DATE: April 18, 2017

TO: Mayor and City Council

SECOND READING AND ADOPTION

FROM: Nils Bentsten, City Manager
Mike Blay, Director of Development Services
Dave Reno, AICP, Principal Planner

SUBJECT: Deemed Approved Alcohol Sales Ordinance

RECOMMENDED ACTION

The Planning Commission recommends that the City Council **deny** Ordinance No. 2017-03, as amended, and not establish deemed approved operating conditions to regulate off-sale alcoholic beverage establishments.

On April 18, 2017 the City Council voted 3-2 to approve Ordinance 2017-03 as amended during the Council Meeting. Resolution 2017-15 was not adopted.

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 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.

On March 9, 2017, the Planning Commission reviewed the draft ordinance, as amended by staff to address the previously stated concerns. Eight people spoke in favor of the ordinance as originally drafted in January. They stated that the ordinance was not against businesses, as people do not shop where they are not comfortable and that control of liquor sales would actually increase sales in support the City's tax revenues. They also stated that this will give enforcement tools for local police and that ABC cannot effectively enforce the provisions of their licenses. Others stated that the ordinance would set a better example in our community and protect our young residents. No one representing liquor stores spoke on this item.

Commissioner Leis began the discussion by saying that removal of the definition of single serve sizes would effectually render the ordinance unenforceable. Commissioner Leis discussed restoring this provision and discussion ensued primarily on this point. However, Chairman Murphy repeated the concerns as discussed in January and requested a vote up or down on the ordinance, as currently drafted. His motion to recommend denial of the ordinance to the City Council was seconded by Commissioner Caldwell and ultimately adopted on a 4 – 0 vote.

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 to enforce the provisions of this ordinance, primarily through the Police Department. Registration to assure completion of the educational program will be required. ABC Impact inspections by the Police Department, to ensure compliance with ABC regulations and applicable City ordinances, will occur on an annual basis. The average ABC Impact inspection, administrative reporting and compliance follow-up will require two hours each for two deputies. This will be a total of 4 hours of labor, per inspection. At the current deputy overtime rate, each inspection will cost the City of Hesperia, approximately \$475 per inspection. This fiscal impact will be similar for all of the 60+, off-sale alcoholic beverage establishments in the City. A resolution to enact a fee for this program is included as Attachment 3.

ALTERNATIVES

1. Regarding the definition of substantial modification to an establishment, the Council may elect to retain the 25% increase as a standard, as this would give staff a clear definition to determine whether a business has been modified.
2. Regarding the expected cost of \$475 per inspection, the Council may elect to adopt a lower fee and commit other funds to pay for the program. Alternatively, the Council may elect to amend the Police Department budget to add the hours necessary for deputies to perform the annual inspections.
3. Regarding requirements for training, the Council may elect to require training for all employees within six months of hire (as opposed to 60 days) and require that all businesses must retain records of completed training on the premises, available for inspection by the City.
4. Provide alternative direction to staff.

ATTACHMENTS

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. 2017-015
4. Ordinance No. 2017-03