



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: January 24, 2017

TO: Mayor and Councilmembers

FROM: City Administrator's Office
Police Department

SUBJECT: Options For Enhanced Oversight Of On-Sale And/Or Off-Sale Alcohol Outlets

RECOMMENDATION: That Council:

- A. Receive a report on the options available to the City to further regulate on-sale and off-sale alcohol outlets;
- B. Determine whether to consider regulation of on-sale outlets, off-sale outlets, or both; and
- C. Provide direction to staff on whether to work with the Ordinance Committee on the development of an ordinance to amend the Municipal Code to regulate new and/or existing alcohol outlets.

EXECUTIVE SUMMARY:

At the May 26, 2016 Council meeting, the City Council requested that staff research and report back on the land use and police oversight options available to the City in relation to the sale of alcohol products. This report identifies and discusses two options for Council consideration: 1) enhancement of the City's current oversight practices; and/or, 2) creation of a new discretionary land use permitting process for both existing and new on-sale and/or off-sale alcohol outlets.

DISCUSSION:

At the outset, the structure of the staff recommendations is the result of Council Member Rowse having a financial conflict of interest. Council Member Rowse's business is an on-sale alcohol licensee, and his financial interest in this matter is therefore "material" and disqualifying under Fair Political Practices Commission regulations (2 CCR §18702.1(a)(7)). Under those regulations, the City Council may segment its decision by breaking it down into two pieces that are not "inextricably interrelated" so that Council

Member Rowse may participate in the portion of the decision for which he does not have a conflict (2 CCR §18706(a)(1)). The part of the decision presenting the conflict must be considered first and finally (2 CCR §18706(a)(2)-(3)). Accordingly, if Council wishes to segment this decision so as to allow Council Member Rowse to participate in any part of it, it must first decide finally whether to regulate on-sale outlets or not. Council Member Rowse will need to announce his conflict and leave the room during the staff report and deliberations on recommendation B.

At the May 26, 2016 Council meeting, the City Council requested that staff research and report back on the land use and police oversight options available to the City in relation to the sale of alcohol products. This report identifies and discusses two options for Council consideration: 1) enhancement of the City's current oversight practices; and/or, 2) creation of a new discretionary land use permitting process for both existing and new on-sale and/or off-sale alcohol outlets. In connection with a discretionary permit process, the City Council may also establish a regulatory compliance program to facilitate and fund local alcohol enforcement efforts.

Background

In California, the sale of alcohol is exclusively regulated by the State Department of Alcohol Beverage Control ("ABC") through the issuance of liquor licenses. Two types of alcohol outlets operate in the City: on-sale and off-sale. On-sale outlets, where alcohol is sold and consumed onsite, include bars and restaurants. Off-sale establishments, where alcohol is sold yet consumed offsite, include markets and liquor stores. There are currently 312 on-sale and 119 off-sale establishments licensed in the City.

Research has shown that the number, density, location, and operational practices of alcohol outlets affect the level of community violence, intoxicated driving incidents, injuries, underage drinking, and public nuisance activities, among other social problems.¹ Large numbers of bars and liquor stores concentrated in a small geographic area often 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 City does not currently regulate alcohol outlets through a discretionary land use approval process. However, it does oversee alcohol outlets in three ways:

1. The Police Department reviews applications for new liquor licenses in relation to crime data and the concentration of alcohol outlets within a given census track. If the approval of a new license would violate these census-driven thresholds, then the Police Department may protest the issuance of the new license to ABC. Moreover,

¹ Ventura County Behavioral Health, Alcohol Retail Outlet Density Affects Neighborhood Crime and Violence. Ventura, CA: Ventura County Behavioral Health, Alcohol and Drugs Programs Prevention Services Issue Briefing (September 2008). Available at: http://www.venturacountylimits.org/pdfs/vcl_issuebrief_alcoholdensity.pdf.

the Police Department is authorized to enforce various provisions of the State Business and Professions (B&P) Code related to the sale and distribution of alcohol at both on-sale and off-sale establishments. The Police Department may also refer infractions of the B&P Code to ABC for consideration when determining whether to renew the license of an offending establishment.

2. The Planning Division reviews applications for new or transferred liquor licenses and ensures that proposed alcohol outlets are consistent with City zoning regulations. This review is limited to determining whether the use is permitted in the proposed zoning district.
3. Chapter 9.05.010 of the Santa Barbara Municipal Code prohibits the consumption of alcohol except where indicated by resolution of the City Council. Alcohol is unrestricted in 14 City parks and facilities and allowed by permit in 16 parks and facilities.

Option One: Enhanced Level of Oversight

The City could enhance its existing efforts to regulate alcohol outlets. For example, the Police Department could undertake a more robust review of proposed establishments and could redouble its efforts to refer infractions of the B&P Code to ABC. However, given the lack of ABC presence in Santa Barbara County, staff is doubtful that these enhanced measures would make a material difference. Besides Police Department oversight, alcohol consumption could be further restricted at City facilities, such as City Parks as permitted by the Municipal Code. Enhanced oversight would require additional funding or a reallocation of existing police priorities.

Option Two: New Discretionary Land Use Approval Process for Alcohol Outlets

Council could adopt an ordinance to mitigate the public nuisance and public safety impacts that are often associated with alcohol. For example, the ordinance could establish operational standards related to loitering, increased police calls, noise, graffiti, and drug sales. New alcohol outlets would be subject to these standards through the issuance of a new discretionary land use permit. Along with these operational standards, restrictions on the types of alcohol sold, container sizes, and the geographic location (e.g. proximity to schools, parks, playgrounds, crime districts, treatment centers, etc.) of businesses could also be applied to new businesses as further discussed below.

Existing alcohol establishments, that have been “grandfathered,” and treated as non-conforming uses, would be regulated under a “Deemed Approved” Ordinance (DAO). A DAO is essentially a retroactive land use permit that would establish similar operating conditions and public nuisance standards for new alcohol outlets as those discussed above. Establishments would be “deemed approved” unless they violated these operating standards or unless there was a change in the use or configuration of

business that revoked its legal, non-conforming status. Such conditions could require the business to undergo a full discretionary review process.

At least seventeen cities and counties in California, including the Cities of San Luis Obispo and Ventura have enacted “Deemed Approved” ordinances (see attachment).

The City would monitor compliance with the operational conditions and public nuisance standards established for both new and existing alcohol outlets. Similar to other inspection programs such as apartment inspections, the City would then establish an annual fee on all regulated alcohol outlets in order to fully cover the cost of the monitoring and enforcement program. Note that a separate application fee would be established to process applications for newly proposed alcohol outlets.

On-Sale and Off-Sale Outlets

The key consideration for any potential restricted discretionary land use approval process relates to the type of outlet to be regulated, whether on-sale, off-sale, or both. Each type of outlet poses a unique set of characteristics, challenges, and opportunities to mitigate associated nuisances.

Off-Sale Outlets

Off-sale outlets, such as liquor stores and markets, feature certain types of packaging, container sizes, and types of alcohol beverages that are prone to abuse. For example, forty-ounce bottles and “airline-sized” bottles packaged as a single serving and fortified wines often create problems associated with the misuse of the products. Along with the operating and public nuisance standards discussed above, new off-sale alcohol outlets meeting certain criteria such as the amount of shelf space, refrigerator space, or floor space could be subject to the following restrictions as conditions of permit approval:

- Geographic Location: distance to a park, school, or other sensitive facility.
- Types of Alcoholic Beverages and Container Size(s): restrictions on alcoholic concentration such as wine with an alcoholic content greater than 14 percent or beer or malt liquor of greater volume than 39 ounces, etc.
- Require the use of locking coolers to prevent “grab and dash” theft.
- Require compliance with all state and local laws and regulations related to alcohol sales and distribution.

On-Sale Outlets

On-sale outlets, such as bars and restaurants, present their own set of challenges including the risk of intoxicated drivers leaving establishments and belligerent patrons fighting with owners, managers, other patrons, and law enforcement at closing time.

Under the potential discretionary land use process, new on-sale alcohol outlets meeting certain criteria such as bar length, dance floor space, etc. could be subject to many of the restrictions and performance standards listed above for off-sale outlets.

In summary, should Council desire to enhance City oversight of alcohol sales, it should consider the following decision points:

- 1) Whether to enhance the City's existing oversight practices or whether to develop a new discretionary permit process;
- 2) If developing a new discretionary permit process is preferred, then Council should consider the type(s) of alcohol outlets to be included, whether on-sale, off-sale, or both.

BUDGET/FINANCIAL INFORMATION:

Adoption of an ordinance to establish a new discretionary land use permit process would also establish two fees: 1) an application fee for new outlets and; 2) a regulatory fee on all new and existing outlets to cover the costs associated with monitoring and enforcing the standards set forth in the ordinance. The amount of the fee would be dependent upon the type and quantity of outlets to be regulated, and would be incorporated into the City's Fee Resolution accordingly.

ATTACHMENT: Deemed Approved Ordinances in California – February 2014

PREPARED BY: Matthew R. Fore, Senior Assistant to the City Administrator

SUBMITTED BY: Paul Casey, City Administrator
Lori Luhnnow, Police Chief

APPROVED BY: City Administrator's Office

Deemed Approved Ordinances (DAO) in California

February 2014

City/ County (Population)	Established (Amended)	Outlet Type			Annual Fee Schedule					
		Off-sale retail outlets	On-sale retail outlets	Total Outlets Affected	Risk/ Calls for service	Hours	Volume	Re-inspection	Minimum	Maximum
Alameda County (1.555m)	2002 (2010)	X	X	3225				X	\$800	\$800
El Cajon (101,435)	2013	X		119					No fee currently but Code provides City Council authority to set fee	
Oakland (400,740)	1993 (2008)	X	X	863				X	\$1,500	\$1,500
Ontario (167,211)	2008	X	X	258					No fee currently but Code provides City Council authority to set fee	
Oxnard (201,555)	2001	X	X	308					\$425	\$425
Petaluma (58,921)	2007	X	X	231					No fee	
Richmond (105,515)	2010	X	X	128					No fee	
Rohnert Park (41,232)	2007 (2011)	X	X	89	X	X	X		\$75	\$1,500
San Bernardino (213,295)	2012	X	X	348					No fee	
San Francisco (825,863)	2006 (2012)	X		809					\$264	\$264
San Leandro (86,890)	2001	X		87				X	No fee	
San Luis Obispo (45,878)	2012	X	X	221					No fee	

Deemed Approved Ordinances (DAO) in California

February 2014

City/ County (Population)	Established (Amended)	Outlet Type			Annual Fee Schedule					
		Off-sale retail outlets	On-sale retail outlets	Total Outlets Affected	Risk/ Calls for service	Hours	Volume	Re-inspection	Minimum	Maximum
Santa Cruz (62,041)	2002 (2010)	X	X	287	X	X	X		\$226.38	\$1,674
Santa Rosa (170,685)	2006	X		242			X	X	\$100	\$5,000
Vallejo (117,796)	1998	X	X	157					\$300	\$300
Ventura (107,734)	2006	X	X	319	X	X	X		\$250	\$1,400
Walnut Creek (65,695)	2012	X	X	209					No fee	