



Ordinance Fact Sheet

TO: CITY COUNCIL **DATE:** October 25, 2004
FROM: CITY ATTORNEY
REGARDING: AN ORDINANCE REGARDING THE POSSESSION OF
OPEN CONTAINERS OF ALCOHOL IN PUBLIC

TITLE OF PROPOSED ORDINANCE:

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 9.24
OF THE PASADENA MUNICIPAL CODE RELATING TO ALCOHOLIC
BEVERAGES IN PUBLIC PLACES

PURPOSE OF THE ORDINANCE:

The purpose of the ordinance is to amend the Municipal Code to reflect the current state of California law as it pertains to the possession of alcohol in public. Currently, the Municipal Code contains section 9.24.030 which prohibits the possession of open alcoholic beverages on city streets and sidewalks and places open to public view. The Constitutionality of this ordinance has been called into question by a series of cases nullifying similar ordinances in the state. The reasoning of the reviewing courts is that under Article XX, Section 22 of the California Constitution, the state retains the authority to regulate the sale, purchase, possession and transportation of alcohol in the state.

Municipalities may not initiate ordinances limiting the state's power unless the state allows an exception. One such exception is Penal Code section 647e which pertains to the possession of alcohol in or around liquor stores. To be in compliance with the state law and to take advantage of one of its few exceptions, the proposed ordinance employs the provisions of Penal Code section 647e by prohibiting the possession of opened alcoholic beverages on the property or adjacent parking lots or sidewalks of our neighborhood liquor stores.

MEETING OF 10/25/2004

AGENDA ITEM NO. 9.A.1.

REASON WHY LEGISLATION IS NEEDED:

In March, 2004, the City Council created a committee to review the problems related to nuisance liquor stores in the city and recommend changes to improve these conditions. The committee heard evidence from the public and the local police regarding local liquor stores where crimes take place such as public drunkenness, prostitution, littering, drug use and sales and other public nuisance activity. The committee later presented to the Council a report of its findings and recommendations, one of which was the creation of this ordinance. This ordinance, allowed by state law, provides the local police an additional tool in combating the problems associated with nuisance liquor stores. This ordinance makes it an infraction to possess an open container or a container whose seal has been broken or some of its contents removed. Officers may cite for this infraction. They may also use this ordinance to make lawful contact with persons who loiter on or near liquor stores to inquire into other criminal behavior, potentially detecting other crimes or deterring crime.

PROGRAMS, DEPARTMENT OR GROUPS AFFECTED:

The Police Department will be charged with enforcing this section and has reviewed this ordinance.

FISCAL IMPACT:

This ordinance may have a minimal impact on the Police Department in that they are already patrolling these areas but may now spend additional amount of time writing citations for this offense. The fines for this offense are in part recoverable by the City of Pasadena.

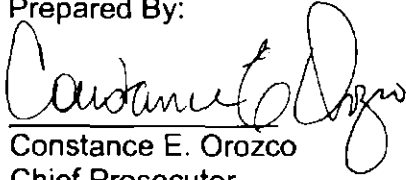
POLICY CHANGES:

None.

Respectfully Submitted,

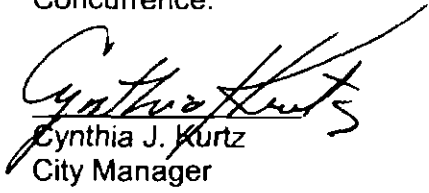

Michele Beal Bagneris
City Attorney/City Prosecutor

Prepared By:



Constance E. Orozco
Chief Prosecutor

Concurrence:



Cynthia J. Kurtz
City Manager

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 9.24
OF THE PASADENA MUNICIPAL CODE RELATING TO ALCOHOLIC
BEVERAGES IN PUBLIC PLACES**

WHEREAS, the City Council of the City of Pasadena has acknowledged that pursuant to the Constitution of the State of California, the municipality is limited in its ability to currently regulate the possession of alcohol in public areas to codified exceptions such as those listed in Penal Code Section 647e; and

WHEREAS, the City Council of the City of Pasadena has determined that the presence of persons possessing opened containers of alcohol in and around establishments licensed for off-premises sales of alcohol is detrimental to the health and safety of the neighborhood; and

WHEREAS, the City Council of the City of Pasadena has determined that in enacting legislation that prohibits the possession of opened containers of alcohol in and around off-sale liquor establishments, the city is both in compliance with state law and maintaining the health and safety of its neighborhoods.

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

Section 1: Section 9.24.030 of Chapter 9.24 of the Pasadena Municipal Code is repealed.

Section 2: Subsection A. of section 9.24.040 of Chapter 9.24 of the Pasadena Municipal Code is amended to read:

A. As used in this section, "posted premises" means those premises which must obtain any retail package off-sale alcoholic beverage license pursuant to Division 9, commencing with Section 23000, of the California Business and Professions Code in order to operate lawfully, ~~and~~ any parking lot immediately adjacent to such licensed premises or on any public sidewalk immediately adjacent to the licensed premises on which visible notices have been posted indicating that the provisions of this section are applicable to such premises.

Section 3: Subsection C. of section 9.24.040 of Chapter 9.24 of the Pasadena Municipal Code is amended to read:

C. No person who has in his or her possession any ~~open beverage container, including a container where the seal has been broken, containing any alcoholic beverage as defined in Section 23004 of~~

the California Business and Professions Code- bottle, can or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, shall enter, be or remain on any the posted premises of any retail, off-sale alcoholic beverage licensee, including the posted parking lot immediately adjacent to or on any public sidewalk immediately adjacent to the licensed and posted premises. This section does not apply to a private residential parking lot which is adjacent to the posted premises.

Section 4: This ordinance shall take effect upon the expiration of thirty days from its publication.

Signed and approved this _____ day of October, 2004.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that this foregoing ordinance was adopted by the City Council of the City of Pasadena at its regular meeting held on _____, 2004, by the following vote:

AYES:

NOES:


ABSENT:

ABSTAIN:

Published:

Jane L. Rodriguez, CMC
City Clerk

APPROVED AS TO FORM


Michele Beal Bagneris
City Attorney/City Prosecutor