

Agenda Report

TO: CITY COUNCIL SEPTEMBER 13, 2004
FROM: CITY MANAGER
SUBJECT: WORKING LIQUOR STORE COMMITTEE RECOMMENDATIONS

RECOMMENDATIONS

This report is to transmit the Working Liquor Store Committee Recommendations for City Council's consideration as follows:

1. Improve coordination among City departments and the Department of Alcoholic Beverage Control in addressing alcohol license transfers.
2. It is recommended that the City utilize maximum allowable time allotments to assess license transfer applications.
3. Identify existing tools and resources available throughout the City that can be used to mitigate problematic off-sale premises.
4. Identify and improve area and methods of data collection and analysis.
5. Direct the City Attorney to draft an ordinance improving local control in addressing nuisance off-premises locations.
6. Share with adjacent jurisdictions and/or monitor other cities' legislative action and innovative efforts to address problematic off-sales premises.
7. Direct the City Attorney to draft an ordinance prohibiting open containers adjacent to posted premises.
8. Actively work with area legislators to pursue modification of legislation, including amortization of nuisance off-premises locations, ensuring bonafide liquor license transfers, and infractions tied to licensed premise locations, as a means to address problems.

9. Promote voluntary compliance among the off-premise owners to promote responsible business operations, education, and a positive relationship with the neighborhoods.
10. Work with community-based organizations to empower youth and residents in the community to take an active role in responding to problematic off-premise locations in their neighborhood.
11. Explore contracting a full time investigator from ABC for exclusive use in Pasadena.

Staff concurs with the recommendations.

BACKGROUND

On February 23, 2004, City Council approved a proposal for a working group to develop recommendations to address neighborhood impacts of nuisance liquor stores. Concerns from residents about the negative influence of some liquor stores demonstrated a need for a comprehensive evaluation of current measures and community-based solutions.

The purpose of the working group was to further define the issues; investigate current laws and the constraints they place on local agencies; investigate options such as condemnation; changes to state law, or others that will allow the City to fully address the issue; and to develop final recommendations for action.

On March 22, 2004, the City Council appointed a 15 member-working group of the following appointees and Councilmembers:

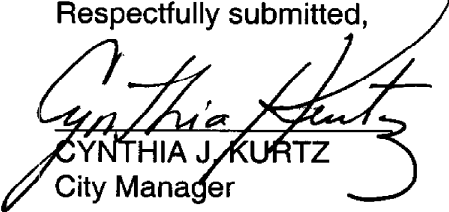
Victor Gordo, Councilmember (Committee Chair)
Steve Haderlein, Councilmember
Chris Holden, Councilmember
Jacquelynne Corby, Senator Jack Scott's office
Lena Kennedy, Assemblymember Carol Liu's office
Maggie Campbell, Old Pasadena Management District
Omel Nieves, Hunt, Ortmann, Blasco
Joe Brown, NAACP
Robert Kneisel, Neighborhood Representative
Maria Salas, Neighborhood Representative
Stephen Lipira, Neighborhood Representative
James MacQuarrie, Neighborhood Representative
Tahra Goraya, Day One
Neidi Dominguez, Student
Jalila Walker, Student
Joone Kim Lopez, Facilitator
Lt. Richard Sandoval, Facilitator

The group met five times to hear presentations from City staff, the State Department of Alcoholic Beverage Control, and residents and to discuss and develop recommendations. On August 12, 2004, the group's facilitator submitted a final report containing eleven recommendations. These recommendations are a product of the working group's staff and the working group's report is attached (Attachment A). Exhibit 1 consists of an overview of the City of Oakland's Deemed Approved Program, and Exhibit 2 consists of methodologies used by other communities.

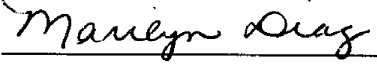
FISCAL IMPACT

The recommendations provided in the report may require additional staff and resources. The cost of an additional FTE from the Department of Alcoholic Beverage Control is yet to be determined. If required, the City Manager will return to the Council with a request for additional resources to move the recommendations forward.

Respectfully submitted,


CYNTHIA J. KURTZ
City Manager

Prepared by:


MARILYN DIAZ, Commander
Field Operations Division

Approved by:


BERNARD K. MELEKIAN
Chief of Police

RECOMMENDATIONS

Pasadena Nuisance Off-Premises Working Group

July 14, 2004

1. Improve coordination among City departments on all matters related to nuisance alcohol outlets and between the City and Department of Alcoholic Beverage Control (ABC) in addressing alcohol license transfers.

Improving coordination among City departments in responding to license transfer application will allow departments to better communicate information as well as experience that will ultimately assist in determining whether or not the city will protest a liquor license transfer. Designated representatives from the Police Department and code enforcement should be directed to work together more to determine if there will be a protest to an application. Once it is determined that the City will challenge a license transfer, City staff should collectively build a strategy on protesting the transfer.

In addition to police reports and other City records collected to support the protest, designated staff should gather feedback from surrounding residents and businesses as well as community-based organizations such as Day One. Testimonies and written documentations from these groups will serve as strong supporting materials to official documents that will be used as evidence for the protest.

In evaluating a transfer application, if the current holder of the license has several violations and is looking to face a license suspension or revocation, a thorough background should be conducted on the new applicant to determine if the transfer is taking place only to avoid punitive actions. If there is any indication that it's not a bona fide transfer, the application should not be approved until can be shown otherwise. To further ensure bona fide transfers, the violations may be associated to the property and therefore be assumed by the new licensee.

It is recommended that City Staff prepare a quarterly report to the Public Safety Committee regarding the status of implementing the adopted recommendations as well as new or revised actions taken to accomplish the City's goals.

2. It is recommended that City utilize maximum allowable time allotments to assess license transfer applications and assign the responsibility for managing response to a designated staff person.

An evaluation of past practice indicates there was a lack of systematic response to notice of license transfer applications. Several retail alcohol outlets that have been problematic to surrounding communities have either transferred or expanded their licenses without any challenge from the city. It's been the City's experience that when a licensee is faced with several violations that could result in a license suspension or revocation, the license is transferred to a family member under a new name

While the ABC grants all license applications and transfers, input from local municipalities is valuable in determining the outcome. According to the ABC, when they receive an application for a license transfer, they send a copy of the application to the local law enforcement agency, city council and the planning department.

If the City decides to challenge the application, it has 30 days in which to submit a formal protest to either deny the applicant or impose additional conditions to the licensee. The ABC will grant an extension of 20-days with a written request from the city. In order for the protest to be considered, it must be supported by evidence that clearly shows the direct causal relationship between the licensee and the reason for the protest. Police reports, observations and/or other data from the police department that establish a nexus (a direct connection) between the problem and the location provide the strongest evidence. Complaint logs and community affidavits are best used as supporting materials to the police information. The ABC will consider the evidence presented and make a determination.

Application for a license transfer offers an opportunity for the City to mitigate problems associated with nuisance off-sale premises including the non-conforming locations. If the City can demonstrate that the business is problematic and that certain conditions proposed by the city would alleviate the problem, ABC can impose those conditions. Also, if the City can demonstrate that the business owner is transferring the license to avoid any punitive actions, ABC can deny the application.

As a matter of standard procedure, a designated staff should request in writing a 20-day extension to the standard 30-day period from ABC to take advantage of the full time allotment provided for protesting transfer applications.

3. Identify existing tools and resources available throughout the City that can be used to mitigate problematic off-sale premises.

Although each City department has its set of responsibilities and unique capabilities, they share a common goal of improving the quality of life in the community. The different tools and methods used by the departments should be inventoried to see how they could best work together to address problematic locations.

In addition, the City should identify existing resources that are available in the community. Community based task forces and organizations that are currently in place can offer valuable insight and assistance to the City.

The City should designate staff to initiate both the inventory of existing tools and resources available within local government and within the community to mitigate problematic off-sale premises.

4. Identify and improve areas and methods of data collection and analysis, including use of an advertised 24-hour hotline and a close working relationship with the community.

To improve data collection, the current system of data collection should be fully evaluated and enhanced if possible. Establishing a centralized and systematic data collection is crucial in building a case against a problematic retail outlet. Documentation, complaints and/or observations made by the police, planning and health departments as well as those from the community regarding a location are valuable and need to be compiled to support city's action against irresponsible retail operators. Currently, there is no central location or a set procedure to ensure proper collection or analysis of data. Police calls for service and crime analysis are sometimes insufficient to establish a direct nexus between the outlet and the problem. Current data is collected and reported based on grid patterns that encompass blocks of streets. Existing data analysis would require a time consuming examination of each call for service and/or incident to build the required nexus.

It is recommended that: 1) the Police Department identify and designate staff to facilitate the collection of information since they already work closely with the community and other city departments: 2) A toll-free hotline number can be established for community members to report problematic retail alcohol outlets, using existing resources within the police department. The messages should be checked every 24-hour by a member of the police department and calls returned when necessary: 3) Distribute posters at off-premises locations providing information to the public on how to report problems associated with alcohol sales.

5. Direct the City Attorney to draft an ordinance improving local control in addressing nuisance off-premises locations.

The City of Oakland provided comprehensive information regarding background and implementation an ordinance they adopted to address nuisance off-premise locations (included as attachment A with comments from the City Attorney's office). The key to the Oakland ordinance is that it is framed as a nuisance abatement ordinance, not a zoning ordinance. Upon an establishment being deemed a nuisance, this allows the city to impose conditions similar to a Conditional Use Permit.

It is recommended that the City Attorney review the Oakland model, and if possible, draft a similar ordinance suitable to the needs of this community.

6. Share with adjacent jurisdictions and/or monitor other cities' legislative actions and innovative efforts to address problematic off-sale premises.

The City will work with adjacent communities to abate issues when the liquor outlet is in the adjacent community. It is recommended that the City identify and direct sufficient staffing resources to specifically monitor methodologies used by other agencies in addressing nuisance off-premise locations. Tracking what other cities have done to modify state legislation and implement innovative preventive measures provides the City with opportunities to initiate new approaches without "reinventing the wheel" and expending time and resources. In addition, the City should engage the community members, organizations and local businesses to identify innovative approaches they become aware of regarding ensuring responsible alcohol sales. New ideas brought to the attention of staff need to be evaluated with consideration of the legality,

logistics, resource demand and funding requirements needed to implement measures. An example of efforts taken by other agencies is included as Attachment B.

7. Direct the City Attorney to draft an ordinance prohibiting open containers adjacent to posted premises.

Current law allows for Counties to enact an ordinance that prohibits possession of open containers of alcohol adjacent to posted premises pursuant to **PC 647(e)**. **PC 647(e)** makes such possession of open containers adjacent to posted premises an infraction. In order to be applicable in a municipality, the municipality must enact a local ordinance enabling the application of the county ordinance.

At this time, Pasadena does not have such an ordinance. Therefore, the police officer must observe the person drinking the alcoholic beverage in order to cite them for drinking in public (PMC 9.24.010). The only action needed to enact the ordinance is the City Council's approval.

This ordinance would help curtail the problem of habitual drunkard who loiter and harass passersby. They are also responsible for acts such as littering and public urination that degrade the quality of life for the neighborhood. Prohibiting open containers is an additional tool that the police department can utilize to combat loitering and public intoxication.

8. Actively work with area legislators to pursue modification of legislation, including amortization of nuisance off-premise locations, ensuring bonafied transfers of licenses, and infractions issued to license premises, as a means to address problems.

An area of great interest and potential impact is modifying state law regarding alcohol license transfers. The current law should be modified to grant local municipalities greater authority in addressing problematic locations.

One such change includes using "Amortization" as a method by which a city can discontinue a legal nonconforming use. This method sets a certain length of time by which the legal nonconforming use must terminate. The state law should be changed to allow the city to amortize under the following conditions:

- Over-concentration
- Nuisance
- Upon sale or transfer of license

An amendment to the state code would be necessary since the state code currently does not allow a city to enact a zoning ordinance, which would terminate the ABC use.

Following is an opinion submitted by the Deputy City Attorney regarding amortization:

Generally, a zoning ordinance may require termination of a nonconforming use by providing for a reasonable amortization period which must be commensurate with the investment involved. See *Elysium Inst. Inc. v County of Los Angeles* (1991) 232 Cal App

3d 408 (a zoning change rendered a nudist camp a nonconforming use and, after a five year amortization period, nudist camp had to be discontinued). The Pasadena Municipal Code provides for the amortization of certain non-conforming structures and uses in Section 17.76.060.

Licenses to sell alcohol are regulated by state law. Business and Professions Code 23790 specifically states that a “premises which had been used in the exercise of those rights and privileges (conferred by the ABC license) at a time prior to the effective date of the zoning ordinance may continue operation . . .” Thus, even if the City were to enact a zoning ordinance which would amortize certain nonconforming uses, it would not apply to the ABC licensees who would be grandfathered in. Accordingly, an amendment to state law would be required to allow for such amortization. For example, billboards may be specifically amortized by state law. See Business and Professions Code 5412.1, 5412.2. and 5412.3.

9. Promote voluntary compliance among the off-premise owners to promote responsible business operations, education, and positive relationships with the neighborhoods.

Working with business owners to encourage voluntary compliance has been effective and yielded positive results. The city should continue to work with the businesses to discuss what conditions the operators can implement to alleviate the community concerns and improve their image. Recent efforts, including educational campaigns, have demonstrated that majority of the businesses are willing to work with the city and do their part to improve community relations.

The conditions should be consistent to assure the businesses that the city is fair and objective as well as supportive of local businesses. Providing the businesses with assistance and helping them understand what they can do to build positive relationship with their neighborhood will help them feel empowered rather than victimized. The city can provide incentives, such as decals of compliance or tax incentives, to recognize those businesses that comply voluntarily and operate responsibly.

10. Work with community-based organizations to empower youth and residents in the community to take an active role in responding to problematic off-premise locations in their neighborhood.

Local school and organizations can be valuable advocates of city’s effort to identify and address problematic locations. Since the residents have the best insight into the problems in their neighborhoods, they should be provided with information and tools to take action in a safe and responsible manner. Students who want to make a positive difference in their community can spark additional interest. The city should work in partnership with existing community-based organization with a history of community outreach to reach schools and local groups to inform them of how they can best access and use the resources available to them.

11. Explore contracting a full time investigator from ABC for use exclusively in Pasadena

The City of Pasadena currently utilizes State of California Alcohol Beverage Control investigative resources, which are shared with other agencies in the region. There are 26 Alcohol Beverage Control agents assigned to the Los Angeles area region, six of which are enforcement officers assigned to the San Gabriel Valley. To provide a more meaningful Alcohol Beverage Control enforcement presence within the community, it is recommended that the city explore the possibility of obtaining a specific allocation of Alcohol Beverage Control enforcement personnel by contracting for service. The agent contracted for service would also address quality of life issues in Pasadena.

ATTACHMENT A

CITY OF OAKLAND DEEMED APPROVED PROGRAM

Background on Oakland's Deemed Approved Program

In August 1993, City of Oakland passed the Education, Monitoring, and Enforcement Program known as the "Deemed Approved" program (Ordinance No. 11624 C.M.S.) to improve the operating standards of non-conforming alcohol outlets and implement an enforcement program to monitor the operators. The California Supreme Court affirmed the Deemed Approved Ordinance, and the Alcoholic Beverage Action Team (ABAT) launched the program in 1997.

Implementation

Oakland's Deemed Approved Program applies to all alcohol-licensed establishments (on-sale premises and off-sale premises), including non-conforming businesses. The program does not apply to restaurants that serve alcohol with the exception of those restaurants located within a specific area referred to as the "corridor." These restaurants were required to enroll in the program because the area was determined to be a nuisance.

A certified letter from the police department was sent out to the business owners to notify them that they have been automatically enrolled and that they must pay an annual fee for their Deemed Approved status. As of December 31, 2003, 466 alcohol outlets are enrolled in the program. To comply with the program, the businesses are required to operate according to the following standards:

- A. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
- B. That it does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
- C. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passerby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detention and arrests;
- D. That it does not result in violations to any applicable provision of any other city, state or federal regulation ordinance or statute;
- E. That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

When there are complaints that an operator is failing to comply with the standards outlined in the Deemed Approved Ordinance, an inspection of the site will be conducted to determine if in fact there is a violation. If there is a violation, operating restrictions will be imposed to mitigate the problem. A re-inspection is conducted at a later date to ensure continued compliance.

In Pasadena, the Nuisance Abatement Team (NAT) that is currently in place to address nuisance problems in the community can handle the implementation of the ordinance. The NAT team is similar to Oakland's ABAT team, which consists of representative from various departments who work together to solve neighborhood problems. The Code Enforcement Commission as it relates to public hearings should carry out the enforcement component of the ordinance. The overall effort can be overseen by the Public Safety Committee to ensure proper coordination and follow-up. Utilization of existing groups provides a cost effective and efficient method to successfully implement the various aspects of the ordinance.

Staffing

The Alcoholic Beverage Action Team (ABAT) is supervised by a police sergeant and consists of two police officers, two police service technicians, one full-time Administrative Analyst II / Planner II and the part-time services of one Deputy City Attorney. In addition, the Deemed Approved Advisory Committee (DAAC) meets on a monthly basis to identify problems and exchange information about controlling nuisance, loitering and criminal activities in and around alcohol outlets.

Fiscal issues

Since its inception in 1997, establishments that were enrolled in the Deemed Approved Program have been required to pay an annual fee of \$600 and a re-inspection fee of \$200. These funds and the police department's general fund budget assume all staff and operating costs. As of January 31, 2004, \$201,000 has been collected from 335 permitted outlets for the program year 2003, a collection rate of 72%. Oakland Police Department has been operating with a deficit of over \$500,000 per year since the program's inception.

They are struggling with punitive actions against business owners who have not paid the fee because the ordinance does not clearly articulate what penalties can be imposed and what powers the city has to carry out such penalties. They also seek grant opportunities to help fund several operations conducted by ABAT. To date, they received \$62,000 in grant money. For the next fiscal year, the Oakland City Council will review a proposal to increase the annual fee from \$600 to \$1,500 with an automatic 5 percent annual increase each succeeding year.

An annual fee and re-inspection fees need to be determined for Pasadena based on the number of outlets and the cost of running the program. The city staff should assess the overall fiscal impact of the ordinance and provide the figures as well as the means to collect the fees. The language of the ordinance should detail specific means of enforcing the fees and any punitive actions that the city will exercise to ensure collection.

Outcome

To date, a total of six alcohol outlets (4 bars & 2 liquor stores) with a Deemed Approved status had their license revoked. For year 2003, ABAT conducted 1156 operations: site visits (818), inspections (114), special joint inspection with other agencies (3); re-inspections (22), decoy attempts (76), decoy sales to minors (13), and bar checks (110).

Aside from a general calls for service graph chart, Oakland PD could not provide any additional data to gauge the effectiveness of the program.

The Oakland ordinance has been upheld because the ordinance was deemed to be a nuisance abatement ordinance and not a zoning ordinance. It should be noted that the City currently has in place a nuisance abatement ordinance as well a nuisance abatement team. Accordingly, the City's currently existing nuisance abatement programs should be reviewed for its applicability and/or possible modification to address problem liquor establishments.

Following is an opinion submitted by the Deputy City Attorney regarding Deemed Approved Ordinances:

The Oakland ordinance was challenged by the California Beverage Retailer Coalition which claimed that the ordinance illegally regulated holders of earlier granted ABC licenses in violation of state law (Business and Professions Code 23790 which allows ABC licensees operating in an area before the enactment of restrictive zoning ordinance to remain in business without having to comply with the restrictive zoning ordinance). In that case *City of Oakland v Superior Court (California Beverage Retailer Coalition)* (1996) 45 Cal App 4th 740, the court found that the Oakland ordinance was a nuisance abatement ordinance and held that a city under its police power may properly enact a local ordinance to control and abate nuisance activities despite the fact that the business that would be regulated possessed grandfather rights that might ordinarily render it immune from compliance with local ordinance. Thus, Oakland's ordinance which prohibited nuisance and criminal activities from being conducted on or near the premises of liquor licensees falls within the legitimate scope of a city's police power. Because the Oakland ordinance was not intended to control the sale of alcoholic beverages, but to eliminate nuisances and criminal activities, it did not conflict with state authority to regulate alcoholic beverage sales. Accordingly, a "deemed approved" ordinance patterned after the Oakland ordinance would not be in contravention of state law.

It should be noted that the City currently has in place a nuisance abatement ordinance as well as a nuisance abatement team. A "deemed approved" ordinance should complement the currently existing nuisance abatement ordinance.

(Added Deputy City Attorney's opinion on Deemed Approved Ordinance)

COPY OF OAKLAND DEEMED APPROVED ORDINANCE

17.156.010 Title, purpose, and applicability.

The provisions of this chapter shall be known as the title and scope of the Deemed Approved Alcoholic Beverage Sale regulations. The purpose of these provisions is to specify the title, purposes, and applicability of the Deemed Approved Alcoholic Beverage Sale regulations and to require conformity to said regulations. (Ord. 11624 § 2, 1993: prior planning code § 15000)

17.156.020 Title of Deemed Approved Alcoholic Beverage Sale regulations.

The provisions of this chapter shall be known as the Deemed Approved Alcoholic Beverage Sale regulations. (Ord. 11624 § 2, 1993: prior planning code § 15001)

17.156.030 Purpose of Deemed Approved Alcoholic Beverage Sale regulations.

The general purposes of the Deemed Approved Alcoholic Beverage Sale regulations are to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare by requiring that Alcoholic Beverage Sales Commercial Activities that were Legal Nonconforming Activities immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale regulations comply with the Deemed Approved performance standards at Article III of this chapter and to achieve the following objectives:

- A. To protect residential, commercial, industrial, and civic areas and minimize the adverse impacts of nonconforming and incompatible uses;
- B. To provide opportunities for Alcoholic Beverage Sale Activities to operate in a mutually beneficial relationship to each other and to other commercial and civic services;
- C. To provide mechanisms to address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels;
- D. To provide that Alcoholic Beverage Sale Commercial Activities are not the source of undue public nuisances in the community;
- E. To provide for properly maintained Alcoholic Beverage Sale establishments so that negative impacts generated by these activities are not harmful to the surrounding environment in any way;
- F. To monitor that Deemed Approved Activities do not substantially change in mode or character of operation. (Ord. 11624 § 2, 1993: prior planning code § 15002)

17.156.040 Applicability of Deemed Approved Alcoholic Beverage Sale regulations.

- A. To Which Property Applicable. The Deemed Approved Alcoholic Beverage Sale regulations shall apply, to the extent permissible under other laws, to all Legal Nonconforming Alcoholic Beverage Sale Commercial Activities within the city.
- B. Duplicated Regulation. Whenever any provision of the Deemed Approved Alcoholic Beverage Sale regulations and any other provision of law, whether set forth in this code, or in any other law, ordinance, or resolution of any kind, imposes overlapping or contradictory regulations, or contain restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in the Deemed Approved Alcoholic Beverage Sale regulations.

C. Relationship to the Zoning Regulations. The Nonconforming Use provisions of the zoning regulations including, but not limited to, Sections 17.114.020, 17.114.050A, 17.114.070(A)(4), 17.114.080(A)(1) and (2), shall apply to the Deemed Approved Alcoholic Beverage Sale regulations. (Ord. 11624 § 2, 1993: prior planning code § 15003)

17.156.050 Administrative Hearing Officer.

There is created an Alcoholic Beverage Sales Administrative Hearing Officer. The Alcoholic Beverage Sales Administrative Hearing Officer shall be a city staff person and shall conduct public hearings and make recommendations intended to encourage and achieve the compliance of particular sites as appropriate. This section is not intended to restrict the powers and duties otherwise pertaining to other city officers or bodies, in the field of monitoring and ensuring the harmony of Alcoholic Beverage Sale Commercial Activities in the city. These parties shall have the powers and duties assigned to them by the Planning Code, by the zoning regulations, by other codes and ordinances, by the City Charter, or by valid administrative authority. (Ord. 11624 § 2, 1993: prior planning code § 15010)

17.156.060 Title, purpose, and applicability.

The provisions of this article shall be known as the definitions. The purpose of these provisions is to promote consistency and precision in the interpretation of the Deemed Approved Alcoholic Beverage Sale regulations. The meaning and construction of words and phrases as hereinafter set forth shall apply throughout the Deemed Approved Alcoholic Beverage Sale regulations, except where the context of such words or phrases clearly indicates a different meaning or construction. (Ord. 11624 § 2, 1993: prior planning code § 15100)

17.156.070 Definitions.

As used in this chapter:

"Alcoholic beverage" means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances, and sales of which requires a State Department of Alcoholic Beverage Control license.

"Alcoholic Beverage Sales Commercial Activity" means the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, excluding Full-Service Restaurants that comply with the below-listed definition of Full Service Restaurant.

"Condition of approval" means a requirement which must be carried out by the activity in order to retain its Deemed Approved Status.

"Deemed Approved Activity" means any Legal Nonconforming Alcoholic Beverage Sales Commercial Activity, as defined in this section, in existence immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale regulations shall be considered a Deemed Approved Activity as long as it complies with the Deemed Approved performance standards as set forth in Section 17.156.090, and shall no longer be considered a Legal Nonconforming Activity.

"Deemed Approved Status" means the status conferred upon a Deemed Approved Activity. Deemed Approved Status replaces legal nonconforming status.

"Full-Service Restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods

which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant. To be considered a Full Service Restaurant under the Deemed Approved Program, the establishment must meet the following criteria:

1. A "full service restaurant" shall serve "meals" to guests at all times the establishment is open for business. An establishment shall not be considered a "full-service restaurant" if it served alcohol without "meal" service being provided with the exception that alcohol sales to restaurant patrons may continue for up to two hours after meal service has ceased to allow guests to comfortably complete their meals.
2. There shall be a real offer or holding out to sell "meals." Premises shall make an offer or holding out of sales of "meals" to the public by maintaining and displaying a printed menu and/or a menu board. A two-thirds majority of the items offered on the menu shall be available at any given time the establishment is open. The mere offering of "meals" without actual sales shall not be deemed sufficient.
3. The "offer" of "meals" is not adequate to meet the above criteria. A "full service restaurant" shall make actual and substantial sales of "meals" to guests for compensation. Substantial sales shall mean that no less than sixty (60) percent of total revenue shall be generated from food service and no more than forty (40) percent of revenue from the sales of alcohol.
4. "Meals" means the usual assortment of foods commonly ordered at various times of the day for the cuisine served. The service of snack foods and/or appetizers alone shall not be deemed compliance with this requirement. "Meals" shall be prepared on the premises. Heating of food prepared elsewhere shall not constitute a meal for the purposes of this policy.
5. Premises shall be equipped for meal service and maintained in good faith. Premises must possess and maintain appliances for the cooking of a variety of foods such as stoves, ovens, broilers, or other devices, as well as pots, pans, or containers that can be used for cooking. Premises shall possess the necessary utensils, table service, and condiment dispensers with which to serve "meals" to the public.
6. A full service restaurant shall comply with all local health department standards.
7. A full service restaurant may have a separate lounge or bar area provided that the restaurant and bar/lounge area operate as a single entity. The physical layout, entry location(s), spatial connection between the areas, and operational characteristics, among other factors, shall be used to determine compliance. Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
8. To the extent that ABC regulations do not conflict with the above criteria, a full service restaurant shall comply with all State Department of Alcoholic Beverage Control regulations related to "Bona fide public eating place, meals."

"Illegal activity" means an activity which has been finally determined to be in noncompliance with the Deemed Approved performance standards in Article III of this chapter. Such an activity shall lose its Deemed Approved Status and shall no longer be considered a Deemed Approved Activity.

"Legal Nonconforming Alcoholic Beverage Sales Commercial Activity" or "Legal Nonconforming Activity" means an Alcoholic Beverage Sales Commercial Activity which was a nonconforming use pursuant to the Nonconforming Use Regulations in Chapter 17.114, and for which a valid state of California Alcoholic Beverage Control license had been issued and used in the exercise of the rights and privileges conferred by the license, at a time immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale regulations. Such an Activity shall be considered a Deemed Approved Activity, and shall no longer be considered a Legal Nonconforming Activity, except such activity shall be subject to those zoning regulations relating to nonconforming uses as specified in Section 17.156.040C, as of the effective date of the Deemed Approved Alcoholic Beverage Sale regulations.

"Officer" means Administrative Hearing Officer, as provided for at Section 17.156.050.

"Performance standards" means regulations prescribed in the Deemed Approved Performance Standards in Article III of this chapter.

"Premises" means the actual space within a building devoted to alcoholic beverage sales.

"Restricted street" means that area applied to a depth of two hundred (200) feet on each side of and including the following streets and portions of streets, as measured perpendicularly from the right-of-way line thereof: E. 14th Street; Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying north of 16th Street; that portion of Edes Avenue lying between Clara Street and Bergedo Drive. (Ord. 12154 § 2, 1999; Ord. 11624 § 2, 1993; prior planning code § 15100-- 15120)

17.156.080 Title, purpose, and applicability.

The provisions of this article, shall be known as the Deemed Approved performance standards. The purpose of these standards is to control dangerous or objectionable environmental effects of Alcoholic Beverage Sales Commercial Activities. These standards shall apply to all Alcoholic Beverage Sales Commercial Activities that were Legal Nonconforming Activities immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale regulations. (Ord. 11624 § 2, 1993; prior planning code § 15200)

17.156.090 Performance standards and Deemed Approved Activities.

An activity shall retain its Deemed Approved Status only if it conforms with all of the following Deemed Approved performance standards:

A. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;

B. That it does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;

C. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;

D. That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute;

E. That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood. (Ord. 11624 § 2, 1993; prior planning code § 15210)

17.156.100 Title, purpose, and applicability.

The provisions of this article shall be known as the Deemed Approved Status procedure. The purpose of these provisions is to: (A) provide notice of Deemed Approved Status upon Alcoholic Beverage Sales Commercial Activities that were Legal Nonconforming Activities immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale regulations; (B) prescribe the procedure for the imposition of conditions of approval upon these activities; and (C) prescribe the procedure for appealing

conditions of approval or the revocation of a Deemed Approved Status. (Ord. 11624 § 2, 1993: prior planning code § 15300)

17.156.110 Automatic Deemed Approved Status.

All Alcoholic Beverage Sales Commercial Activities that were Legal Nonconforming Activities immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale regulations shall automatically become Deemed Approved Activities as of the effective date of the Deemed Approved Alcoholic Beverage Sale regulations and shall no longer be considered Legal Nonconforming Activities. Each such Deemed Approved Activity shall retain its Deemed Approved Status as long as it complies with the Deemed Approved performance standards at Section 17.156.090. (Ord. 12154 § 3, 1999: Ord. 11624 § 2, 1993: prior planning code § 15310)

17.156.120 Notification to owners of Deemed Approved Activities.

The Officer shall notify the owner of each Deemed Approved Activity, and also the property owner if not the same, of the activity's Deemed Approved Status. Such notice shall be sent via certified return receipt mail; shall include a copy of the performance standards of Article III of this chapter with the requirement that these be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review; notification that the activity is required to comply with all these same performance standards; that a review fee is required, and the amount of such fee provided in the master fee schedule; and that the activity is required to comply with all other aspects of the Deemed Approved Alcoholic Beverage Sale regulations. Should the notice be returned, then the notice shall be sent via regular U.S. Mail. (Ord. 11624 § 2, 1993: prior planning code § 15320)

17.156.130 Procedure for consideration-- Intent.

The provisions of Sections 17.156.130 through 17.156.190 shall outline the process by which Deemed Approved Activities are required to be reviewed. (Ord. 11624 § 2, 1993: prior planning code § 15330)

17.156.140 Procedure for consideration of violations to performance standards.

Upon receiving a complaint from the public, Police Department, or any other interested party that a Deemed Approved Activity is in violation of the performance standards at Section 17.156.090, and once it is determined by the city that violations appear to be occurring, then the Deemed Approved Status of the Deemed Approved Activity in question shall be reviewed by the Administrative Hearing Officer at a public hearing. Notification of the public hearing shall be in accordance with Section 17.156.180. The purpose of the public hearing is to receive testimony on whether the operating methods of the Deemed Approved Activity are causing undue negative impacts in the surrounding area. At the public hearing, the Administrative Hearing Officer shall determine whether the Deemed Approved Activity conforms to the Deemed Approved Performance Standards set forth in Section 17.156.090 and to any other applicable criteria, and may continue the Deemed Approved Status for the activity in question or require such changes or impose such reasonable Conditions of Approval as are in the judgment of the Administrative Hearing Officer necessary to ensure conformity to said criteria and such conditions shall be based on the evidence before the Officer. The decision of the Officer shall be based upon information compiled by staff and testimony from the business owner and all other interested parties. New conditions of approval shall be made a part of the Deemed Approved Status and the Deemed Approved

Activity shall be required to comply with these conditions. The determination of the Officer shall become final ten calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.156.160. (Ord. 11624 § 2, 1993: prior planning code § 15340)

17.156.150 Procedure for consideration of violations to conditions of approval.

In the event of a violation of any of the provisions set forth in Sections 17.156.010 through 17.156.140 of these regulations, or upon evidence that there has been a failure to comply with any prescribed condition of approval, the Officer may hold a public hearing. Notification of the public hearing shall be in accordance with Section 17.156.180.

The purpose of this public hearing is to receive testimony and determine whether violations to any conditions of approval attached to the site have occurred. The Officer may add to or amend the existing conditions of approval based upon the evidence presented; or alternatively may revoke the Deemed Approved Activity's Deemed Approved Status. The determination of the Administrative Hearing Officer shall become final ten calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.156.160. The decision of the Planning Commission shall be final unless appealed to the City Council in accordance with Section 17.156.170. (Ord. 11624 § 2, 1993: prior planning code § 15350)

17.156.160 Appeal to Planning Commission.

Within ten calendar days after imposition of conditions of approval on a Deemed Approved Activity or the revocation of Deemed Approved Status, an appeal may be taken to the City Planning Commission by the Deemed Approved Activity owner or any other interested party. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the city. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Officer or wherein its decision is not supported by the evidence in the record. The appeal shall be accompanied by such information as may be required to facilitate review. Upon receipt of the appeal and the required appeal fee in accordance with Section 17.156.190, the Secretary to the Planning Commission shall set the date for consideration thereof. The Administrative Hearing Officer shall, not less than ten days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; the adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as appropriate, of the date and place of the hearing on the appeal.

In considering the appeal, the Planning Commission shall determine whether the established use conforms to the applicable Deemed Approved performance standards and/or conditions of approval, and may continue or revoke a Deemed Approved Status; or require such changes in the existing use or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity to said performance standards.

The Planning Commission shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the Commission is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the Commission thereafter until decided. The decision of the Planning Commission on the appeal to the conditions of approval imposed by the Administrative Hearing Officer shall be final. (Ord. 11624 § 2, 1993: prior planning code § 15360)

17.156.170 Appeal on the revocation of a Deemed Approved Status to the City Council.

Within ten calendar days after the date of a decision by the City Planning Commission to revoke a Deemed Approved Status, an appeal from said decision may be taken to the City Council by any interested party. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Planning Commission and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal and an appeal fee in accordance with Section 17.156.190, the Council shall set the date for consideration thereof. The City Clerk shall notify the Secretary of the City Planning Commission of the receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than ten days prior thereto, give written notice to: the owner of the Deemed Approved Activity; the property owner; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the time, date and place of the hearing on the appeal. In considering the appeal, the Council shall determine whether the Deemed Approved Activity conforms to the applicable Deemed Approved performance standards, and may approve or disapprove the revocation or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said standards. The decision of the City Council shall be made by resolution and shall be final. The City Council shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the Council is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the Council thereafter until decided. (Ord. 11624 § 2, 1993: prior planning code § 15370)

17.156.180 Notification of public hearing.

The Officer shall notify the owner of each Deemed Approved Activity, and also the property owner if not the same, of the time and place of the public hearing. Such notice shall be sent via certified return receipt mail, and shall include notification that the Deemed Approved Status of the Deemed Approved Activity will be considered before the Officer. The public hearing shall be noticed by posting notices within three hundred (300) feet of the subject property; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the subject property. All such notices shall be given not less than ten days prior to the date set for the hearing, if such is to be held. Fees for notification shall be in accordance with Section 17.156.190 and paid for by the Deemed Approved Activity in question.

A. Notice on Site. A city-provided notice of eight and one-half by eleven (11) inches in dimension shall also be posted on the premises of the subject activity, placed in the window of the activity (if a window facing the street is not present, then the placard will be required to be posted onto the exterior of the building). All notices shall advertise the time, date, purpose and location of the public hearing for each particular site. All notices shall be given not less than ten days prior to the date set for the hearing.

B. Notice by Mail. Notice by mail is deemed given on the date the notice is placed into the U.S. Mail system. (Ord. 12154 § 4, 1999: Ord. 11624 § 2, 1993: prior planning code § 15380)

17.156.190 Fee schedule.

Fee, and regulations pertaining to fees, including the review, notification, appeal, and reinspection of Deemed Approved Activities shall be in accordance with the city master fee schedule. (Ord. 11624 § 2, 1993: prior planning code § 15400)

17.156.200 In general.

The provisions of this article shall apply to the enforcement of the Deemed Approved Alcoholic Beverage Sale regulations. (Ord. 11624 § 2, 1993: prior planning code (part))

17.156.210 Official action.

All officials, departments, and employees of the city vested with the authority to issue permits, certificates, or licenses shall adhere to, and require conformance with, the Deemed Approved Alcoholic Beverage Sale regulations. (Ord. 11624 § 2, 1993: prior planning code § 15500)

17.156.220 Violations and penalties.

A. Infractions. Any person who violates, causes, or permits another person to violate any provision of these regulations is guilty of an infraction unless otherwise provided.

B. Separate Offenses for Each Day. Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of these regulations is committed, continued, permitted, or caused by such violator and shall be punishable accordingly.

C. Any Violation a Public Nuisance. In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared to be a public nuisance and may be summarily abated as such by the city.

D. Injunction as Additional Remedy. Any violation of any provision of these regulations shall be and is declared to be contrary to the public interest and shall, at the discretion of the city, create a cause of action for injunctive relief.

E. Penalties. Any person convicted of an infraction under the provisions of this section shall be punishable by a fine to the maximum permitted under state law. Any violation beyond the second conviction within a one-year period may be charged by the City Attorney or District Attorney as a misdemeanor, and the penalty for conviction shall be punishable by a fine or imprisonment to the maximum permitted under state law.

F. Liability for Expenses. In addition to the punishment provided by law, a violator is liable for such costs, expenses, and disbursements paid or incurred by the city or any of its contractors in correction, abatement, and prosecution of the violation. Reinspection fees to ascertain compliance with previously noticed or cited violations shall be charged against the owner of the Deemed Approved Activity. Fees shall be in the amount described in Section 17.156.190 for charged reinspections. The inspection official shall give the owner or other responsible party of such affected premises a written notice showing the itemized cost of such chargeable service and requesting payment thereof. Should the bill not be paid in the required time, the charges shall be placed as a lien against the property. (Ord. 11624 § 2, 1993: prior planning code § 15510)

17.156.230 Enforcement.

The city shall designate the appropriate personnel to enforce the provisions of these regulations. (Ord. 11624 § 2, 1993: prior planning code § 15520)

17.156.240 Inspection and right of entry.

The officials responsible for enforcement of the Planning Code, or their duly authorized representatives, may enter on any site or into any structure for the purpose of investigation, provided they shall do so in a reasonable manner, whenever they have cause to suspect a violation of any provision of these regulations, or whenever necessary to the investigation of violations to the Deemed Approved performance standards or conditions of approval prescribed in these regulations. An owner or occupant or agent thereof who refuses to permit such entry and investigation shall be guilty of infringing upon the violations and penalties as outlined in Section 17.156.220 and subject to related penalties thereof. (Ord. 11624 § 2, 1993: prior planning code § 15530)

(Added entire Oakland Deemed Approved Ordinance)

ATTACHMENT B

Methodologies used by other communities

The following information highlights efforts made in other communities regarding nuisance off-premise locations. Mr. Stephen Lipira brought this information to the attention of the Nuisance Off-premise Working group.

San Diego banned single sales of alcohol in new stores in a downtown area.

East Salinas County California manages alcohol consumption with an ordinance that prohibits alcohol in city parks

<http://www.tf.org/tf/images/nomas.pdf>

Seattle Washington - The Washington State Liquor Control Board, dissatisfied with previous efforts to rein in public drunkenness among the homeless in Seattle's Pioneer Square, has imposed a mandatory rule restricting alcohol sales there. The measure restricts the sale of certain types of alcohol in the area and limits the hours of "off-premises" sales.

Tacoma Washington designated its entire downtown an alcohol-impact area in 2001 - was effective in dealing with public drunkenness, according to a study by Washington State University. The study indicated a 61 percent decrease in "liquor in the park" police-service calls, a 21 percent decrease in detoxication admissions and a 35 percent reduction in alcohol-related emergencies within the Tacoma alcohol-impact area.

The rule prohibits carry-out sales of alcohol between 6 and 9 a.m. Beer and malt liquor could not be sold by single can or bottle, and some fortified-wine brands will be banned.

The purpose of the rule is to break the daily drinking cycle by making alcohol less available. The measure is intended to decrease illegal activities and alcohol-related medical emergencies.

<http://www.cleansafeworldwide.org/doc.asp?doc=979&cat=33>.

County commissioners in **Manatee County Florida** have proposed a county ordinance that would make it unlawful in most cases to have an open container of alcoholic beverage or consume an alcoholic beverage within 300 feet of a business that sells those beverages unless its liquor license authorizes on-site consumption. Violators could be prosecuted and sentenced to a maximum of 60 days in jail and a \$500 fine.

<http://www.cleansafeworldwide.org/doc.asp?doc=1707>

A neighborhood group in **Northwest Washington DC** got the merchants to agree to stop selling single cans and bottles in November 2000, and restricted refrigeration.

<http://www.cleansafeworldwide.org/doc.asp?doc=979>

Gallup New Mexico Mayor Bob Rosebrough has negotiated an agreement with most of Gallup liquor dealers to open their package stores two hours later. The agreement also includes a prohibition against selling fortified wine and beer and malt liquor in 40-ounce bottles.

Cape Cod Massachusetts controlled liquor consumption of homeless people by expanding their ID card program, giving liquor storeowners the right and encouraging them to card more individuals (not just homeless). Since many homeless people do not hold a license, a state liquor ID card, a passport or a current military ID can be used. In addition to a driver's license, these four are the only ones acceptable for liquor purchases. A license holder could refuse to serve, regardless of age and licensees do not have to serve anyone who is intoxicated or appears to be intoxicated.

<http://www.barnstablepatriot.com/01-29-98-news/drunks.html>