

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA  
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TO: COMMISSIONERS AND INTERESTED PARTIES

FROM: CHUCK DAMM, SOUTH COAST DISTRICT DIRECTOR  
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LAURINDA R. OWENS, COASTAL PROGRAM ANALYST, SAN DIEGO AREA OFFICE

SUBJECT: STAFF RECOMMENDATION ON MAJOR AMENDMENT 3-95 (ALCOHOL OUTLETS)  
TO THE CITY OF SAN DIEGO'S LOCAL COASTAL PROGRAM PROGRAM (For  
Public Hearing and Possible Final Action at the Coastal  
Commission Hearing of February 7-9, 1996)

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SYNOPSISSUMMARY OF AMENDMENT REQUEST

The City is requesting to amend the LCP Implementation Plan by repealing and re-enacting Section 101.0515 related to alcoholic beverage establishments. The new ordinance is proposed to be effective on a citywide basis and addresses the procedures for establishing such outlets. The new ordinance is intended to help mitigate the problems sometimes associated with commercial buildings offering alcohol for sale and off-site consumption.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed revisions to the City of San Diego's Implementation Plan, as submitted. The appropriate resolutions and motions may be found beginning on Page 3. The findings for certification of the proposed ordinance, as submitted, begin on Page 4.

BACKGROUND

The City of San Diego Local Coastal Program (LCP) was segmented into twelve geographic areas, corresponding to community plan boundaries, with separate land use plans submitted and certified (or certified with suggested modifications) for each segment except Mission Bay. The Implementing Ordinances were submitted and certified with suggested modifications, first in March of 1984, and again in January of 1988. Subsequent to the 1988 action on the implementation plan, the City of San Diego incorporated the suggested modifications and assumed permit authority for the majority of its coastal zone on October 17, 1988. Isolated areas of deferred certification remain, and will be submitted for Commission certification once local planning is complete. Several amendments to the certified LCP have been processed.

## ADDITIONAL INFORMATION

Further information on the City of San Diego LCP amendment (alcoholic beverage establishments ordinance) may be obtained from Laurinda R. Owens, Coastal Planner, at the San Diego Area Office of the Coastal Commission, 3111 Camino Del Rio North, Suite 200, San Diego, CA 92108-1725, (619) 521-8036.

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### PART I. OVERVIEW

#### A. LCP HISTORY

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve (12) parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments; all of the segments are presently certified, in whole or in part, with the exception of Mission Bay. The earliest land use plan (LUP) approval occurred in May, 1979, with others only occurring in 1988, in concert with the implementation plan.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January, 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remain; these are completing planning at a local level and will be acted upon by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been 18 major amendments and seven minor amendments processed for it. These have included everything from land use revisions in several segments, the rezoning of a single properties to modifications of city-wide ordinances. While it is difficult to calculate the number of land use plan revisions or implementation plan modifications, because the amendments often involve multiple changes to a single land use plan segment or ordinance, the Commission has reviewed, at least, 35 land use plan revisions and 83 ordinance amendments. Most amendment requests have been approved, some as submitted and some with suggested modifications; further details can be obtained from the previous staff reports and findings on those amendment requests.

#### B. STANDARD OF REVIEW

The standard of review for implementation plans is Section 30513 of the Coastal Act. Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission

shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held both Planning Commission and City Council meetings with regard to the subject amendment request. Each of these local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

- A. RESOLUTION I (Resolution to approve certification of the City of San Diego LCP Implementation Plan Amendment 3-95, as submitted)

MOTION I

I move that the Commission reject the City of San Diego's LCP Implementation Plan Amendment #3-95, as submitted.

Staff Recommendation

Staff recommends a NO vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution I

The Commission hereby approves certification of the amendment to the City of San Diego's Local Coastal Program on the grounds that the amendment conforms with, and is adequate to carry out, the provisions of the certified land use plan. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the approval would have on the environment.

PART III. FINDINGS FOR APPROVAL OF THE IMPLEMENTATION PLAN AMENDMENT 3-95

A. AMENDMENT DESCRIPTION

The proposed amendment request will amend the City's implementation plan of its certified LCP by repealing and re-enacting Section 101.0515 related to alcoholic beverage establishments. The City currently regulates alcoholic beverage establishments located in a "demonstration area" which has been in effect since 1986 (see Exhibit No. 2). The new ordinance by contrast, is

proposed to be effective on a citywide basis and addresses the procedures for establishing such outlets including requirements for ministerial approval and specifications as to when a Conditional Use Permit (CUP) is required. In order to obtain ministerial approval, a new alcohol beverage outlet would need to meet all of the development standards that are contained in the ordinance. If any of the criteria cannot be met, then the applicant would need to apply for a Conditional Use Permit. The new ordinance is intended to help mitigate the problems sometimes associated with businesses which sell alcohol for off-site consumption, which in general, include inappropriate public behavior, noise, littering, crime and violence.

## **B. FINDINGS FOR CERTIFICATION**

The purpose and intent and major provisions of the ordinance and the discussion regarding adequacy to implement the certified land use plan are as follows:

a) Purpose and Intent of the Ordinance. The purpose and intent of the ordinance is to help mitigate the problems associated with commercial buildings offering alcohol for sale for off-site consumption. Such problems have been identified as unacceptable public behavior, noise, littering, loitering, crime and violence, interference with pedestrians using the sidewalks, excessive signage, defacement and damaging of structures and the public right-of-way, discouragement of more desirable and needed commercial uses, and, deterioration of a neighborhood's quality of life and image. The purpose of the ordinance is to reduce such adverse impacts by restricting the location and imposing conditions upon the development and operation of such uses citywide.

Another objective of the proposed ordinance is to provide a mechanism to implement recently enacted State legislation which allows more local control regarding alcohol-related uses. State legislation limits alcohol sales in areas identified as having high crime or undue concentration of such facilities unless the City Council makes a finding of overriding "public convenience and necessity". The newly proposed ordinance will strengthen City standards (replacing the existing Alcoholic Beverage Establishments ordinance) for these uses and allow for more effective enforcement.

b) Major Provisions of the Ordinance. The major provisions of the ordinance establishes the definition of "alcoholic beverage outlet" and the procedures for establishing such an outlet. Specifically, an application to operate a proposed alcoholic beverage outlet shall receive ministerial approval if the project complies with all of the standards which are included. Those standards include, in part, that the proposed alcoholic beverage establishment meets the following criteria:

- is located on a property that is zoned to allow such use;
- is not located within a census tract or within six hundred feet of a census tract where the general crime rate exceeds the citywide average general crime rate by more than 20%;

- is not located in a census tract where the ratio of such outlets exceeds one license per 1,369 population;
- that it is not located in an adopted redevelopment area;
- is at least 300 linear feet from any other such outlet;
- is at least 600 feet from any public or private school, public park, playground, church, hospital, etc.;
- is at least 100 feet from any residential zone;
- does not provide pool or billiard tables, video arcade type games, etc;
- posts signs which indicate "no loitering, consumption, or open alcoholic beverage containers allowed inside the premises, in the parking area or in the public sidewalks near the premises;

Other major provisions of the ordinance include requirements pertaining to distances between such facilities and those areas that are exempt from the provisions of the ordinance and under what conditions existing outlets may continue to operate.

c) Adequacy of Ordinance to Implement the Certified LUP. The City's proposed revisions to its ordinance addressing the establishment of alcoholic beverage outlets could ultimately restrict their location by application of conditions upon the development and operation of such uses citywide. Initially, there was a concern that in applying a citywide ordinance that restricts such uses, visitor-commercial uses in the coastal zone could potentially be limited as well. For example, liquor stores, delicatessens, convenience stores (i.e., 7-11, etc.) are visitor-commercial uses. As outlined in the previous section of this report, the new ordinance sets up strict criteria regarding the location of new establishments which sell alcohol.

However, it is important to clarify that the ordinance only applies to off-sale establishments which primarily includes liquor stores and smaller markets which sell such beverages for consumption off the premises. It does not apply to on-sale establishments such as restaurants and bars. Furthermore, the proposed ordinance also exempts hotels, motels and lodging establishments where alcohol sales are incidental to the primary use of the premises, as well as establishments greater than 15,000 square feet which would exempt most grocery stores. Also excluded is the Gaslamp Quarter Planned District due to the unique issues, circumstances and planning objectives for that area.

In addition, existing establishments may continue to operate and would be exempt from the new ordinance. However, strict requirements would be placed if such a use was ever discontinued for more than six months with the possibility of losing their location. Room for flexibility and exemptions has also been built into the ordinance. For example, although the ordinance provides that such establishments must be a certain distance from another

similar use, exceptions may be made if such outlets are separated by natural or man-made barriers such as topography, freeways, flood control channels, rivers and similar features.

As noted earlier, a proposed use must comply with all of the standards set forth for ministerial approval. If for any reason, the above-cited criteria cannot be met, then the applicant would need to apply for a Conditional Use Permit (CUP). In so doing, the review of an application for such an establishment would go through full public hearing enabling the public to participate in the decision-making process regarding permitting such a use in their neighborhood. However, the City has expressly stated, in response to numerous alcohol beverage establishment owners' objections to the proposed ordinance, that the CUP process does not necessarily prohibit a use from locating in an area, but rather, allows a public hearing process to take place where the matter can be reviewed.

The City held several workshops/meetings to discuss the proposed ordinance with the various communities affected. Some of the major concerns raised by small business owners and alcohol beverage outlet owners were that the ordinance should be applied only to high-crime areas instead of on a citywide basis. The City however, found that even those communities outside of the existing "CUP demonstration" area have identified problems associated with alcohol outlets and that over 50% of the census tracts in the City have a high crime rate or "undue concentration".

Another concern was that exempting large outlets (over 15,000 sq.ft.) was unfair to small businesses. However, the City indicated that according to police reports, large stores do not create significant or alcohol-related problems to surrounding areas. The large stores sell primarily food products needed in communities and are located in "self-contained superblocks" and are somewhat buffered from residential and other commercial uses by large parking areas. However, small stores are often interspersed with other uses.

An additional business-owner concern pertains to restrictions on permitting existing outlets to add onto the establishment. In response to this concern, the City indicated that existing establishments are "grandfathered" unless there is a change or the type of liquor license, the outlet is closed for more than six months, the gross floor area is expanded by more than 10%, or the owner or licensee is convicted of specific violations. In addition, existing citywide regulations do not allow the expansion of any grandfathered use. However, the proposed ordinance would allow business expansion provided it does not exceed 10% of the gross floor area. As such, the proposed ordinance would actually give alcohol outlets an opportunity to expand that is not granted to other businesses pursuant to the municipal code.

In summary, it appears the City has adequately addressed each of the concerns raised by the business owners regarding the proposed ordinance and its effects on establishing new businesses which sell alcohol for off-site consumption. The Commission finds that placing restrictions on the location of new establishments which sell alcoholic beverages for off-site consumption will not adversely affect visitor-commercial uses since uses such as hotels, motels

and restaurants will be exempt from the ordinance, thereby, preserving such facilities for visitor use. Two of the primary criteria in permitting such uses is that they cannot be located in a high crime area or within 600 feet of a residential area. Since not all of the areas of the coastal zone are prone to high crime rates, coastal areas would not be solely affected by the proposed ordinance nor would visitor-uses such as liquor stores be excluded in all parts of the City's nearshore areas. It is important to note that it is only in documented problem areas or in areas of "undue concentration" that such outlets could potentially be restricted. Restrictions on locating such facilities in problem areas is not considered a significant adverse effect on visitor-serving commercial uses. The visitor commercial land use designation and companion zoning would remain with any number of other qualifying uses able to be developed on affected properties. The Commission finds that there will continue to be ample visitor-serving commercial facilities to serve the tourist demand in coastal areas.

All of the various certified land use plans of the 12 segments of the City's certified LCP contain policies which address the protection of the health, safety and welfare of the public, and policies addressing preservation of visual quality in community neighborhoods, etc. The LUPs also mandate visitor commercial use priority and enhancing tourism. Inasmuch as the ordinance is intended to reduce crimes and inappropriate public behavior while simultaneously increasing the visual quality of certain "blighted" areas by imposing restrictions regarding signage, litter and graffiti removal, etc., the proposed changes to the ordinance can be found in conformance with, and adequate to carry out, the certified land use plans of the City's certified LCP.

#### PART V. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the subject LCP amendment, as submitted, would not result in significant environmental impacts under the meaning of the California Environmental Quality Act.

The proposed amendment to the City of San Diego's implementing ordinances, has been found consistent with and adequate to carry out the policies of the certified land use plan. Individual projects resulting from the proposed changes would require review by the City for compliance with development

standards which address, in part, adequate separation of such facilities from public institutions, parks and residential areas, signage requirements and removal of litter and graffiti.

Any specific impacts associated with individual development projects would be assessed through the environmental review process; and, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that no significant, unmitigable environmental impacts under the meaning of CEQA will result from the approval of the proposed LCP amendment.

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