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June 4, 1987

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Law & Legislation Committee
City Council Chambers
Sacramento, CA 95814

Re: An Ordinance Relating to Special Permits
For Sale of Alcoholic Beverages for
Off-Premises Consumption

Honorable Members in Session:

SUMMARY

This report presents for Committee review amendments to the Comprehensive Zoning Ordinance which would require a Special Permit for any new use selling alcoholic beverages for off-premises consumption which is proposed to be located within 500 feet of residentially-zoned property, or a church, synagogue or other place of religious worship, school or park.

BACKGROUND

Several Councilmembers, including Mr. Smallman, Mr. Pope, and Mr. Serna, have asked the City Attorney to explore the possibility of adopting a special permit process for uses selling alcoholic beverages for off-premises consumption, and providing notice of such proposed uses to property owners in the applicant's neighborhood. Currently, the City's Zoning Ordinance does not contain special permit requirements for establishments proposing to sell alcoholic beverages for off-premises consumption. State law does authorize adoption of such special permit requirements. The Business and Professions Code provides that the Department of Alcoholic Beverage Control shall not issue licenses for uses which would not conform to a valid local zoning ordinance.

This report presents amendments to the City's zoning ordinance which would require a special permit for all establishments selling alcoholic beverages for off-premises consumption, whether by a beer-wine

license or by a general license, if the proposed location were within 500 feet of residentially-zoned property, a place of worship, school or park. This includes but is not limited to liquor stores, grocery stores, convenience stores and mini-marts. There is an exception for establishments in excess of 15,000 square feet where less than 10% of the shelf space is used for sale of alcoholic beverages, because Planning staff and the Police Department believe that these uses do not have the impact on neighborhoods which may be caused by establishments which place a greater emphasis on alcoholic beverage sales.

The amendments as proposed do not require a special permit for a use involving primarily on-premises consumption, such as a bar or restaurant. If desired, the special permit requirement could be expanded to bars without covering full-service restaurants.

The amendments provide for notice of the special permit application to owners of property located within 500 feet of the proposed location.


A special permit program such as the one described here has workload implications for Planning staff and the Planning Commission. The Planning Department is extremely concerned about these implications and will attend the Committee meeting to address this issue with the Committee.

RECOMMENDATION

It is recommended that the Committee give staff final direction on the draft ordinance and refer the draft ordinance to the Planning Commission for public hearing or to the Council for enactment of an emergency ordinance.

Respectfully submitted,

JAMES P. JACKSON
City Attorney

By: 
DIANE B. BALTER
Deputy City Attorney

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE ADDING SECTIONS 2-C-55, 2-E-26, 15-C-3-e AND 22-A-91 TO THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF SACRAMENTO, ORDINANCE NO. 2550, FOURTH SERIES, AS AMENDED, RELATING TO SALES OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 2-C-55 is hereby added to the Comprehensive Zoning Ordinance of the City of Sacramento, Ordinance No. 2550, Fourth Series, as amended, to read as follows:

Sec. 55. USE: ALCOHOLIC BEVERAGE SALES FOR OFF-PREMISES CONSUMPTION

	S	C1	C2	C3	C4	M1 M1	M2 M2	MIP
55.	C 36	36	36	36	36	(S) 36	(S) 36	36

SECTION 2.

Section 2-E-36 is hereby added to the Comprehensive Zoning Ordinance of the City of Sacramento, Ordinance No. 2550, Fourth Series, as amended, to read as follows:

Sec. 36.

A Special Permit shall be required to establish this use at any location within 500 feet of any residentially-zoned property, or any church, synagogue, or other place of religious worship, school or park. No Special Permit shall be required for any store greater than 15,000 square feet in floor area where the shelving allocated to alcoholic beverages does not exceed ten percent of the total shelving within the store. No Special Permit shall be required for an on-sale licensee on account of such licensee's statutory off-sale privileges, if the licensee does not hold itself out as selling alcoholic beverages for off-premises consumption.

SECTION 3.

Section 15-C-3-e is hereby added to the Comprehensive Zoning Ordinance of the City of Sacramento, Ordinance No. 2550, Fourth Series, as amended, to read as follows:

e. Alcoholic beverage sales for off-premises consumption:

Notwithstanding the provisions of subparagraphs a), b) and c) above, in the case of an application for a Special Permit to sell alcoholic beverages for off-premises consumption, notice shall be given to all owners of property located within five hundred (500) feet from the property involved in the proceedings.

SECTION 4.

Section 22-A-91 is hereby added to the Comprehensive Zoning Ordinance of the City of Sacramento, Ordinance No. 2550, Fourth Series, as amended, to read as follows:

91. Alcoholic beverage:

Alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine or beer, and 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.

DATE PASSED FOR PUBLICATION:

DATED ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

LAW AND LEGISLATION COMMITTEE MEETING

Thursday, May 7, 1987
LOCATION: City Council Chambers
915 I Street, Second Floor
Sacramento, California

The meeting was called to order at the hour of 4:01 p.m. by Chairman Terry Kastanis, and roll was answered as follows:

PRESENT: Committee Members Shore, Bradley, Pope and Kastanis.

The order of hearing the agenda items was changed, due to the fact that some members of the public in attendance who wished to make comments on certain agenda items were limited on time, and also because Councilman Dave Shore did not plan to participate on Item No. 1, and ask that this item be heard last.

3. Fair Campaign Practices Ordinance repealing City Code Chapter 62.204, which requires a statement on the ballot as to whether a candidate has signed the City's Fair Campaign Practices Code.

RECOMMENDATION OF STAFF: PRESENTED FOR CONSIDERATION BY COMMITTEE.

REPORTS BACK: CONSIDER REPEALING ENTIRE ORDINANCE; PRESENT REPORT TO LAW AND LEGISLATION COMMITTEE.

COMMITTEE ACTION: REPEAL APPROVED AND SCHEDULED FOR COUNCIL MEETING OF MAY 21, 1987

VOTING RECORD: MOVED: POPE; SECONDED: SHORE
AYES: UNANIMOUS

MINUTES:

Diane Balter, Deputy City Attorney, was present to discuss this item and answer any questions.

Councilman Shore questioned the enforcement measures, and pointed out that in 1985, Councilman Pope's opponent refused to comply with the Code of Fair Campaign Practices, stating that it was unenforceable, and only signed it because the ballot would state whether or not the Code was signed. He stated that even when candidates do sign the Code, they don't always adhere to its provisions, and that mailers are often sent out in disregard of the ordinance.

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COMMITTEE ACTION SHEET

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Brian Van Camp spoke as a private citizen and mayoral candidate in opposition to the repeal of this section. He feels that noting whether or not a candidate signed the Code is one way to show the public that the candidate will comply; one means of universally reaching the general public. Also, this requirement has worked satisfactorily in the past and has not been challenged. He feels that only when this requirement has been successfully challenged in court should it be repealed.

Councilman Shore stated that the City now has an ordinance with no teeth in it, and that it is unenforceable. Brian Van Camp stated that it would be up to the candidate to challenge this, and that we can't say it is unenforceable since the City controls the machinery by which the notation is made on the ballot. Councilman Kastanis asked whether this requirement has ever been challenged. Attorney Balter said she didn't think so.

Councilman Pope expressed his feeling that a candidate might sign the Code just so the public wouldn't know that he/she didn't sign, regardless of whether he/she planned to adhere to it.

Lorraine Magana, City Clerk, said that there have been problems regarding the signing of the Code in the past, and that once this requirement is removed from the ballot, there is no incentive at all to comply with the ordinance. Then it becomes a greater problem when a candidate doesn't comply.

Councilman Kastanis asked if the procedure was that the candidate was given a copy of the Code of Fair Campaign Practices, the candidate is asked to sign it, and the candidate decides whether or not to sign; no threats. Lorraine Magana said this was true, and that if a candidate doesn't wish to sign, the Clerk's office usually calls the opposing candidates to inform them of that fact.

Councilman Pope moved to adopt the ordinance repealing City Code Section 62.204. Councilman Shore seconded the motion, noting for the record that he feels free speech is a higher priority, and if anything we do infringes on free speech, the Constitution should take precedence.

Lorraine Magana stated at this time that this matter involves a timing problem, since they need to put together the candidates' election guide.

There was discussion regarding rescinding the entire Fair Campaign Practices Ordinance, but it was decided that because of the time

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3. CONTINUED FROM PREVIOUS PAGE.

constraints this could not be done at this time. It was agreed to bring the matter of rescinding the entire ordinance before the Law and Legislation Committee at a later date.

It was unanimously agreed to support the proposed ordinance and to bring it before the full Council at their meeting on May 12, 1987.

2. Resolution to permit the diversion of traffic in Old Sacramento during certain peak hours.

RECOMMENDATION OF STAFF: RECOMMEND APPROVAL AND FORWARD TO COUNCIL.

REPORTS BACK: NONE

COMMITTEE ACTION: APPROVED AND FORWARDED TO COUNCIL.

VOTING RECORD: MOVED: SHORE: SECONDED: POPE
AYES: UNANIMOUS

MINUTES:

Deputy Chief Tom Stark of the Sacramento Police Department was present regarding this item. He explained the use of bollards (steel poles) to divert traffic in Old Sacramento, and how the Police Department would place them where needed and only when necessary. The times of placement would most likely be on Friday and Saturday nights, and at other times as needed to control congestion. He said that at the present time they are using barricades and reserve officers to see where the traffic should be stopped, and that they don't intend to just block off the streets for no reason.

Councilman Shore moved, Doug Pope seconded, and it was unanimously agreed to approve the resolution to permit the diversion of traffic in Old Sacramento during certain peak hours.

4. SB 1608 (Garamendi) regarding leasing of state property for emergency shelters and feeding programs.

RECOMMENDATION OF STAFF: RECOMMEND SUPPORT
 REPORTS BACK: NONE
 COMMITTEE ACTION: SUPPORTED
 VOTING RECORD: MOVED: SHORE; SECONDED: POPE;
 AYES: UNANIMOUS

MINUTES:

There was no discussion on this matter. Councilman Shore moved, Councilman Pope seconded, and it was unanimously agreed to support SB 1608.

*Councilman Shore left the meeting at this time.

1. An emergency ordinance amending Section 7.72 and 7.73 of the Sacramento City Code relating to outdoor sales and displays of merchandise, food and drink.

RECOMMENDATION OF STAFF: RECOMMEND APPROVAL AND FORWARD TO COUNCIL.
 REPORTS BACK: NONE
 COMMITTEE ACTION: APPROVED AND FORWARDED TO COUNCIL.
 VOTING RECORD: MOVED: BRADLEY; SECONDED: POPE
 AYES: BRADLEY, KASTANIS, POPE
 ABSTAINED: SHORE

MINUTES:

Deputy City Attorney Diane Balter explained that this is a staff-generated item written to encourage vendors inside and not outside abandoned buildings or private buildings with the owner's permission.

There was a great deal of discussion regarding the impact this amendment would have on parades, carnivals, etc. It was explained that vendors are allowed on public rights-of-way, as in parades.

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COMMITTEE ACTION SHEET

1. ITEM CONTINUED FROM PREVIOUS PAGE

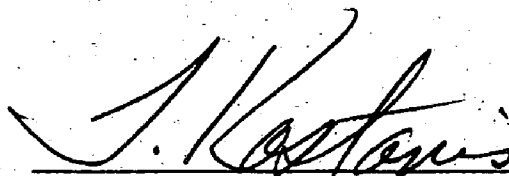
Dwight Samuels, an attorney located in Old Sacramento and the attorney of record for one of the vendors, spoke before the Committee. He said he has been working with the City regarding interpretation of this code section for some time now, as he feels it was vague and unenforceable. He said he feels it is still vague and unenforceable, and that his client can't determine what is a violation and what is not. He feels that the City is trying to restrict use of private property, and that his client leases a bare piece of property and sells from a trailer during the Jazz Festival. Mr. Samuels expressed his feeling of discrimination, since if his client placed a 6' tarp around his trailer he would conform to the code section, whereas some businesses have high walls around them but are still visible from the street. He feels also that the City is taking away the rights of private property owners, saying they can't do something on their own property. Unless that "something" was odious to the general public, what a person does on his property should be that person's own business. He stated that his office is already in the process of preparing to file litigation regarding this matter, as his client was cited last year for the same thing, although the citation was later dismissed because, he feels, it was unenforceable.

Lori Hensley of the Old Sacramento Merchants' Association spoke in favor of this amendment. She said that the State does not lease property to vendors; that vendors remain on public streets. Also, she explained that this amendment does not create a monopoly because of the limits imposed, since during special events such as the Jazz Festival, the only people allowed inside the area for purchases are those with Jazz Festival tickets.

Dwight Samuels again spoke, expressing his frustration that the Code is saying that it's okay to sell on public property, but not on private property, which is not fair. He also expressed anger that action on this matter is being taken just 15 days before the Jazz Festival, and that there has to be something more acceptable. Councilman Kastanis stated that he would welcome Mr. Samuels to submit his recommendations to the City.

Councilman Bradley moved to approve adoption of the amendments to Sections 7.72 and 7.73 of the Sacramento City Code and forward to Council. Councilman Pope seconded the motion, and it was passed as noted above.

The meeting was adjourned at 4:52 p.m.


TERRY KASTANIS, CHAIRMAN

ATTEST:


JUDY VARVEL, SECRETARY