

REPORT TO CITY COUNCIL

DATE: MAY 13, 2009

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

SUBJECT: INTRODUCTION AND FIRST READING OF ORDINANCE NO. 09-362, AMENDING ZONING ORDINANCE SECTIONS 9120.1, 9120.15, 9312.2, 9312.3, 9396.1, 9396.2, 9396.3, 9542.1, AND 9710 (ALCOHOLIC BEVERAGE ESTABLISHMENTS), AND CHAPTER 4 OF THE AGOURA VILLAGE SPECIFIC PLAN, REGARDING ON-SALE AND OFF-SALE OF ALCOHOLIC BEVERAGES (CASE NO. 09-ZOA-002)

Staff is requesting that the City Council conduct a public hearing to introduce Ordinance No. 09-362 for first reading. The ordinance would amend Municipal Code Sections 9120.1, 9120.15, 9312.2, 9312.3, 9396.1, 9396.2, 9396.3, 9542.1, and 9710 (alcoholic beverage establishments), and Chapter 4 of the Agoura Village Specific Plan regarding on-sale and off-sale of alcoholic beverages.

As part of this year's work program, the City Council directed staff to explore options to regulate businesses that sell alcoholic beverages. On March 11, 2009, the City Council conducted a pre-screen review, considered the recommendations of the Economic Development Committee (EDC), and initiated a zoning ordinance amendment to require a Conditional Use Permit for any new businesses that propose to sell or serve alcoholic beverages.

This effort was undertaken to achieve greater control over nuisance-type issues, such as noise, particularly related to the proximity to residential areas, as well as overall safety issues, and any impacts related to the concentration of such businesses. The main goal was to gain control over new businesses, and to do so in a way that provided the most flexibility to the City. Requiring a Conditional Use Permit allows decisions to be made on a case-by-case basis, following a public hearing. This is similar to most neighboring jurisdictions. While there is some variation among these communities as far as what is covered, every city between Ventura and Calabasas, as well as the Counties of Ventura and Los Angeles, require a Conditional Use Permit for businesses selling alcoholic beverages.

To assist staff in preparing the text amendments to the Zoning Ordinance, staff received recommendations from the EDC. Comments received by staff were forwarded to the Planning Commission, who conducted a public hearing on April 16, 2009, and recommended approval of the attached proposed Zoning Ordinance Amendment. For reference, also attached is a copy of

the Planning Commission resolution, Planning Commission staff report, and Planning Commission meeting minutes.

The following is a summary of the proposed ordinance:

1. Clean-up and clarification of the Zoning Ordinance to more clearly define on-sale and off-sale of alcohol and proper reference of appropriate State Alcohol Beverage Control (ABC) license type. Includes re-definition to allow off-sale in the FC overlay zone for larger food stores and amendments to the Agoura Village Specific Plan to be consistent with the proposed zoning ordinance amendments.
2. Establishes the requirement for Conditional Use Permit for any new on- and off-sale ABC licenses, including new findings for approval.
3. Requirement that any expansion to existing establishments and changes to type of ABC license are subject to a Conditional Use Permit.

Given the wide variety of business types and possible issues related to proximity, the Planning Commission agreed that reviewing every new case would ensure the greatest degree of protection to the City, its residents, and its businesses. Similarly, the Commission further found that each new case should be considered against a set of general standards, i.e., findings, instead of specific standards. Each circumstance is unique, and findings for approval for new Alcoholic Beverage Establishments (ABEs) are designed to give the Planning Commission the authority to decide whether the application is acceptable from a community compatibility standpoint. Consideration would be given both to physical design and the overall operation of the business, including hours of operation.

Based on public comments made at the City Councils' pre-screen review on March 11, 2009 of the ordinance amendments, direction was given to explore applying the new standards not only to new ABEs but also to existing establishments. Generally, when the zoning ordinance is amended, uses that no longer comply with the amended ordinance, but were legal at the time the ordinance is adopted, are considered nonconforming and may continue to operate.

At this time, the Planning Commission believes it is advisable to proceed with the amendments strictly for new ABEs, as proposed. Addressing existing establishments would take additional work and time, and the Planning Commission believes putting the Conditional Use Permit provisions in place for new ABEs should not be delayed. Receiving input from the affected existing businesses is one important step that would need to be taken before proceeding.

In addition, staff is exploring ways to achieve some greater degree of enforcement regarding complaints within the framework of existing regulations. It may be possible to achieve the desired results without amending the nonconforming provisions. In fact, businesses with live entertainment are subject to the Conditional Use Permit requirement, and enforcement of the Conditional Use Permit and potential revocation as well as enforcement of the noise ordinance are tools already available.

Another option is to only consider existing categories of ABEs that have a history of complaints. The Planning Commission noted that requiring all 50 existing licensed ABEs (15 off-sale and 35 on-sale) in the City to obtain Conditional Use Permits would create a processing constraint, and that it would be more effective to require Conditional Use Permits from certain types of ABEs.

Certain off-sale ABEs, such as larger grocery stores, drug stores, and delicatessens, have not posed land use compatibility problems in the past due to the nature of the business. Therefore, staff finds that it would not be necessary to further regulate such existing ABEs retroactively. In the on-sale category, businesses that focus on food sales rather than focus on the sale of alcohol tend to create fewer issues for the City. Distinctions could be made between restaurants and bars in determining which existing businesses should apply for a Conditional Use Permit.

Staff's experience is that the combination of alcoholic beverage sales and live entertainment leads to the greatest potential for land use conflicts and safety concerns. Extending business hours beyond the typical time for dinner, and including music in the mix, can increase the noise level beyond what neighbors expect in their neighborhoods. Live entertainment may also be exclusive of food service, which encourages patrons to stay longer, leading to a greater consumption of alcohol. This compounds potential secondary effects that further disrupt the quiet enjoyment of neighborhoods and requires enforcement. Based on this, the City Council may wish to consider existing ABEs that only have a Los Angeles County live entertainment permit to retroactively require a Conditional Use Permit for both alcohol sales and live entertainment.

In summary, it is the Planning Commission's recommendation that the City Council proceed with the ordinance amendment as proposed. The Planning Commission further recommended if the City is to apply the new standards to existing ABEs, that the following types of existing establishments be subject to Conditional Use Permits: restaurants in which alcohol is served at times when there is no food service, and establishments that have County live entertainment permits but no City of Agoura Hills Conditional Use Permit for live entertainment. If this is the direction Council wishes to pursue, staff will return as soon as possible with a Zoning Ordinance Amendment addressing existing ABEs, including an appropriate amortization period. Alternatively, the City Council could direct staff to explore and apply enforcement on a case-by-case basis, as complaints arise, within the framework of existing regulations.

It should also be noted that the recommendation on the proposed ordinance amendment does not include any changes to the City's current review process. Most, if not all, ABEs will be occupying existing buildings. The application review process for a Conditional Use Permit for them will not involve new construction, which will expedite the review process. Staff would expect most Conditional Use Permits for ABEs to be able to come to the Planning Commission in a month or two. The component of the Conditional Use Permit process for ABEs that would consume the most time would be public notification which is the most crucial part of the process. Staff does not recommend amending the process to facilitate these new applications nor does staff believe the process would be unreasonably long. The Planning Commission concurred with this recommendation to not amend the review process.

RECOMMENDATION

It is recommended the City Council introduce, read by title only, and waive further reading of Ordinance No. 09-362, amending Municipal Code Sections 9120.1, 9120.15, 9312.2, 9312.3, 9396.1, 9396.2, 9396.3, 9542.1, and 9710 (alcoholic beverage establishments), and Chapter 4 of the Agoura Village Specific Plan regarding on-sale and off-sale of alcoholic beverages.

Attachments: Ordinance No. 09-362
 Planning Commission Resolution No. 967
 Draft Planning Commission Meeting Minutes (April 16, 2009)
 Planning Commission Staff Report (April 16, 2009)

ORDINANCE NO. 09-362

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING ZONING ORDINANCE SECTIONS 9120.1, 9120.15, 9312.2, 9312.3, 9396.1, 9396.2, 9396.3, 9542.1, AND 9710 (ALCOHOLIC BEVERAGE ESTABLISHMENTS) AND CHAPTER 4 OF THE AGOURA VILLAGE SPECIFIC PLAN REGARDING ON-SALE AND OFF-SALE OF ALCOHOLIC BEVERAGES (CASE NO. 09-ZOA-002)

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES ORDAIN AS FOLLOWS:

Section 1. Section 9120.1 H.1, H.2, and H.3 and Section 9120.15 D.1. of Part 3 of Chapter 1 of Article IX (Zoning Ordinance) of the Agoura Hills Municipal Code is hereby amended to read:

9120.1. A.

H.1. *Alcoholic beverage establishments, off-sale.* “Alcoholic beverage establishment off-sale” shall mean any establishment wherein alcoholic beverages are sold, served, or given away to be consumed off the premises, including, but not limited to, any establishment that has obtained or intends to obtain an Alcoholic Beverage Control License type 20 or 21. References to an off-sale alcoholic beverage establishment shall include any immediately adjacent area that is owned, leased, rented, or controlled by the permittee.

H.2. *Alcoholic beverage establishments, on-sale.* “Alcoholic beverage establishment on-sale” shall mean any establishment wherein alcoholic beverages are sold, served, or given away to be consumed on the premises, and which has obtained or intends to obtain an Alcoholic Beverage Control license type 40, 41, 42, 47, 48, 51, 52, 61, 63 and/or 75. References to an on-sale alcoholic beverage establishment shall include any immediately adjacent area that is owned, leased, or rented, or controlled by the permittee. It shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises.

~~H.1.~~ H.3. *Alcoholic beverages.* “Alcoholic beverages” shall mean any alcohol, spirits, liquor, wine, beer, or any liquid or solid which contains one-half of one (1) 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.

9120.15. O.

~~D.1. *Off sale liquor establishments.* Off sale liquor establishment shall mean premises which offer the sale of alcoholic beverages to be consumed off the premises.~~

Section 2. Section 9312.2 and Section 9312.3 of Part 2 of Chapter 3 of Article IX (Zoning Ordinance) of the Agoura Hills Municipal Code are hereby amended to read:

“9312.2. Commercial use table I.

The following shall be commercial use table I. Note: Since the mixed use district is the same as the business park office retail district, it is not provided for in this table.

	USE,SERVICE OR FACILITY	COMMERCIAL			BUSINESS PARK	
		<i>CS</i>	<i>CRS</i>	<i>CR</i>	<i>BP-OR</i>	<i>BP-M</i>
	Unless otherwise indicated, listings denote retail sales operations					
A.						
3.5	Alcohol, off-sale <u>Alcoholic beverage establishments, off-sale</u>	W	W	W	W	W
3.6	Alcohol, on-sale <u>Alcoholic beverage establishments, on-sale</u>	K W	K W	K W	K W	K W
3.65	Alcohol, on-sale consumption as an incidental service to a bona fide eating establishment	X	X	X	X	X
B.						
3.	Bar, tavern	X W	X W		U W	
C.						
2.	Café/restaurant	X	X		U	X
L.						
14.	Liquor store	X W	X W		G,U W	G W
W.						
6.	Winery sales facility/tasting room	X W	X W			X W

9312.3. Special conditions

The following special conditions apply to the uses indicated by the corresponding letter in table I described in section 9312.2.

W. Such use is permitted by a conditional use permit subject to the required findings as stated in sections 9363.3 and 9673.8 being made. Off-sale liquor- alcoholic beverage establishments prohibited in the FC overlay district, except supermarket/food stores with a floor area greater than 10,000 square feet.

Section 3. Section 9396.1 of Part 11 of Chapter 3 of Article IX (Zoning Ordinance) of the Agoura Hills Municipal Code is hereby added to read:

9396.1. Alcoholic beverage sales

In order to protect adjacent neighborhoods from the harmful effects attributable to the sale of alcoholic beverages, to ensure that businesses selling alcoholic beverages are not the source of undue public nuisances in the community, and to minimize the adverse impacts of incompatible uses, the planning commission shall approve an application for a conditional use permit for an alcoholic beverage sales establishment.

9396.2 Conditional Uses

Off-site and on-site alcoholic beverage establishments shall be subject to the issuance of a conditional use permit pursuant to Agoura Hills Municipal Code Sections 9396.3 and 9673.

9396.3 Findings

In addition to the findings required by Agoura Hills Municipal Code Section 9673.2.E, the planning commission shall make the following findings, based on information submitted by the applicant and/or presented at the public hearing, before granting a conditional use permit:

- A. The requested use at the proposed location will not adversely affect the use of a school, park, playground or similar use within a five-hundred-foot radius;
- B. The requested use at the proposed location is sufficiently buffered by topographic conditions or public or private improvements from residentially zoned areas within the immediate vicinity so as not to adversely affect said areas;
- C. The exterior appearance of the structure will not be inconsistent with the external appearance of commercial structures already constructed or under construction within the immediate neighborhood so as to cause blight or property deterioration, or to substantially diminish or impair property values within the neighborhood;
- D. The upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development and use of abutting properties and the surrounding neighborhood;
- E. The sale of alcoholic beverages may be restricted to certain hours of each day of the week as necessary to ensure that activities related to the project are compatible with the quiet enjoyment of the neighborhood;
- F. If an off-sale alcoholic beverage establishment, the requested use is not located in the freeway overlay land use district, unless it is a supermarket/food store larger than 10,000 square feet of floor area;
- G. The requested use will not contribute to an undue concentration of alcoholic beverage establishments in the area;
- H. The requested use is not located in what has been determined to be a high-crime area, or where a disproportionate number of police calls occur.

I. If the sale of alcohol is proposed at an establishment that also offers live entertainment, said Conditional Use Permit request shall be reviewed in conjunction with the Conditional Use Permit for live entertainment.

Section 4. Section 9542.1 of Part 5 of Chapter 5 of Article IX (Zoning Ordinance) of the Agoura Hills Municipal Code is hereby amended to read:

9542.1. Prohibited Uses

In addition to the prohibited uses in the underlying district, the following are prohibited in the FC overlay district:

B. ~~Off-sale liquor~~ Alcoholic beverage establishments. This section shall not apply to the sale of alcoholic beverages which are wrapped or otherwise enclosed in a sealed container and sold as part of a gift package or other goods, only where there is no public display of alcoholic beverages where the sale of such items is incidental to the primary business on the premises, and where the sales of such items do not exceed fifteen (15) percent of the gross sales of the business at said location. This section shall also not apply to supermarket/food stores with a floor area greater than 10,000 square feet.

Section 5. Section 9710, Part 11 of Chapter 7 of Article IX (Zoning Ordinance) of the Agoura Hills Municipal Code is hereby added to read:

PART 11. NONCONFORMING ALCOHOLIC BEVERAGE ESTABLISHMENTS

9710. Changes to Nonconforming Alcoholic Business Establishments.

The provision set forth in this chapter shall apply to any changes to nonconforming alcoholic beverage establishments. Existing establishments may continue to operate as provided herein, except when any of the following conditions apply:

- A. The establishment changes its type of retail liquor license with the Department of Alcohol Beverage Control;
- B. There is a substantial modification to the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" shall include, but not be limited to, any increases of 20% or more in the floor area or shelf space principally devoted to alcohol sales, or 100 square feet, whichever is greater.
- C. The off-site or on-site alcoholic beverage establishment expands a customer service area primarily devoted to the sale or service of any alcoholic beverages and/or increases the number of customer seats primarily devoted to the sale or service of any alcoholic beverages.
- D. The alcoholic beverage license has been either revoked or suspended for any period by the ABC.

Section 6. Chapter 4 of the Agoura Village Specific Plan is hereby amended to read:

Land Uses

Prohibited Uses

The following are prohibited in the AVSP Zone: Adult book stores, adult entertainment, adult theater and similar adult uses, outdoor displays, mini-storage facilities and yards, truck and equipment rentals and the like, drive-thru facilities such as restaurants and banks, and ~~off-sale liquor stores establishments except for wine tasting/sales.~~

Table 4.1 Allowable Use Table

The following shall be commercial use table I. Note: Since the mixed use district is the same as the business park office retail district, it is not provided for in this table.

Allowable Uses by Proposed Zones						
<i>X = permitted use</i>	Zone A	Zone B	Zone C	Zone D	Zone E	Zone F
<i>CUP = conditional use permit</i>						
<i>- = prohibited uses</i>						
Uses						
Retail						
<u>Alcoholic beverage establishments, off-sale</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	-
Restaurant						
<u>Alcoholic beverage establishments, on-sale</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	-
Bar, tavern	X <u>CUP</u>	X <u>CUP</u>	X <u>CUP</u>	X <u>CUP</u>	X <u>CUP</u>	-
Microbrewery	X <u>CUP</u>	X <u>CUP</u>	X <u>CUP</u>	X <u>CUP</u>	X <u>CUP</u>	-
Wine tasting/sales	X <u>CUP</u>	X <u>CUP</u>	X <u>CUP</u>	X <u>CUP</u>	X <u>CUP</u>	-

Section 7. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court or competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or applications, and to this end the provisions of this Ordinance are declared to be severable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof even if one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof is declared invalid or unconstitutional.

Section 8. The City Clerk shall certify to the passage of this Ordinance and shall cause same to be published pursuant to state law within fifteen (15) days after its passage, and said Ordinance shall become effective 30 days after its passage.

PASSED, APPROVED, and ADOPTED this _____ day of _____, 2009,
by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

BY:

Denis Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

Craig A. Steele, City Attorney

RESOLUTION NO. 967

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF AGOURA HILLS
RECOMMENDING APPROVAL OF A ZONING ORDINANCE AND AGOURA
VILLAGE SPECIFIC PLAN AMENDMENT
REGARDING ON-SALE AND OFF-SALE ALCOHOLIC BEVERAGE
ESTABLISHMENTS (CASE NO. 09-ZOA-002)**

**THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS DOES HEREBY
RESOLVE, FIND, DETERMINE AND ORDER AS FOLLOWS:**

WHEREAS, on March 11, 2009, the City Council directed staff to prepare an ordinance to require a conditional use permit for the on-sale and off-sale of alcoholic beverages in the City; and

WHEREAS, staff met with the Economic Development Committee on two occasions to receive recommendations concerning the proposed revisions; and

WHEREAS, the Planning Commission has considered amendments to the Zoning Ordinance to amend Sections 9120.1 and 9120.15 (Definitions), Sections 9312.2 and 9312.3 (Commercial Use Table), Sections 9396.1, 9396.2, and 9396.3 (Standards for Specific Uses), Section 9542.1 (Freeway Corridor Overlay District), and Section 9710 (Nonconforming Alcoholic Beverage Establishments), of the City of Agoura Hills Zoning Ordinance, and Chapter 4 (Permitted Uses and Prohibited Uses) of the Agoura Village Specific Plan. A public hearing was duly held on April 16, 2009, in the Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the public hearing was duly given; and

WHEREAS, amendments to the Zoning Ordinance and Agoura Village Specific Plan are necessary to preserve and protect the health, safety, and welfare of the City. The proposed ordinance does not prohibit these uses, but would allow them to be reviewed and considered on their merits, following a public hearing, if it can be determined that they have taken necessary steps to ensure that they will maintain the neighborhood integrity, and will be compatible with their surroundings. Without these amendments the City would not be able to protect its residential neighborhoods, or to ensure businesses are carried out in a fashion that protects property values; and

WHEREAS, the proposed amendments to the Zoning Ordinance and Agoura Village Specific Plan are consistent with the purposes of the General Plan. The proposed ordinance serves implement Land Use Element policies related to making infill development compatible with adjacent uses. It also satisfies General Plan Community Design Element standards designed to preserve the high quality of the City's existing residential areas. This serves both the residential neighborhoods and the business community by supporting a logical policy framework. As such, the proposed ordinance will better implement the City's design and safety standards set forth in the General Plan; and

WHEREAS, the Planning Commission has determined that there is no possibility that the proposed amendments would have a significant effect on the environment, and that the amendment, therefore, is not subject to CEQA, per Section 15061.B.3.

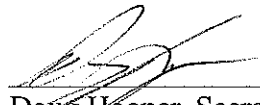
NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Agoura Hills recommends the City Council adopt the attached amendment to Sections 9120.1 and 9120.15 (Definitions), Sections 9312.2 and 9312.3 (Commercial Use Table), Sections 9396.1, 9396.2, and 9396.3 (Standards for Specific Uses), Section 9542.1 (Freeway Corridor Overlay District), and Section 9710 (Nonconforming Alcoholic Beverage Establishments) of the City of Agoura Hills Zoning Ordinance, and Chapter 4 (Permitted Uses and Prohibited Uses) of the Agoura Village Specific Plan.

PASSED, APPROVED and ADOPTED this 16th day of April, 2009, by the following vote to wit:

AYES: (2) Rishoff, Zacuto
NOES: (0)
ABSENT: (2) Buckley Weber, O'Meara
ABSTAIN: (1) Nouzille

Curtis Zacuto, Vice Chairperson

ATTEST:



Doug Hooper, Secretary

NEW PUBLIC HEARING

3. REQUEST: Request for the Planning Commission to conduct a public hearing and provide a recommendation to the City Council regarding a proposed ordinance to require a Conditional Use Permit for the commercial on-sale and off-sale of alcoholic beverages by amending Zoning Ordinance Sections 9120.1 and 9120.15 (Definitions), Sections 9312.2 and 9312.3 (Commercial Use Table), Sections 9396.1, 9396.2, and 9396.3 (Standards for Specific Uses), and Section 9542.1 (Freeway Corridor Overlay District), and Section 9710 (Nonconforming Alcoholic Beverage Establishments); and amending Chapter 4 (Permitted Uses and Prohibited Uses) of the Agoura Hills Specific Plan.

APPLICANT: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

CASE NO.: 09-ZOA-002

LOCATION: Citywide

ENVIRONMENTAL DETERMINATION: Exempt from CEQA per Section 15061.B.3

RECOMMENDATION: Staff recommended that the Planning Commission adopt the draft Resolution, recommending that the City Council adopt draft Ordinance Case No. 09-ZOA-002.

PUBLIC COMMENTS: Vice Chair Zacuto opened the Public Hearing.

There were no speakers on this item.

Vice Chair Zacuto closed the Public Hearing.

COMMISSIONER NOUZILLE STATED THE 21ST AMENDMENT OF THE UNITED STATES CONSTITUTION HAS A PERSONAL SIGNIFICANCE TO HER AND SHE ABSTAINED FROM PARTICIPATING IN THE PUBLIC HEARING FOR THIS ITEM.

ACTION: On a motion by Commissioner Rishoff, seconded by Vice Chair Zacuto, the Planning Commission moved to adopt the Resolution, recommending that the City Council adopt draft Ordinance Case No. 09-ZOA-002. Motion carried 2-0-1. Commissioner Nouzille abstained. Chair O'Meara and Commission Buckley Weber were absent.



DEPARTMENT OF PLANNING AND
COMMUNITY DEVELOPMENT

ACTION DATE: April 16, 2009

TO: Planning Commission

APPLICANT: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

CASE NO.: 09-ZOA-002

LOCATION: Citywide

REQUEST: Request for the Planning Commission to conduct a public hearing and provide a recommendation to the City Council regarding a proposed Ordinance to require a Conditional Use Permit for the commercial on-sale and off-sale of alcoholic beverages by amending Zoning Ordinance Sections 9120.1 and 9120.15 (Definitions), Sections 9312.2 and 9312.3 (Commercial Use Table), Sections 9396.1, 9396.2, and 9396.3 (Standards for Specific Uses), Section 9542.1 (Freeway Corridor Overlay District), and Section 9710 (Nonconforming Alcoholic Beverage Establishments); and amending Chapter 4 (Permitted Uses and Prohibited Uses) of the Agoura Hills Specific Plan.

ENVIRONMENTAL ANALYSIS: Exempt from CEQA per Section 15061.B.3.

RECOMMENDATION: Staff recommends that the Planning Commission adopt the attached Resolution recommending that the City Council approve draft Ordinance Case No. 09-ZOA-002.

I. BACKGROUND

The City is considering amendments to the City Zoning Ordinance and Agoura Village Specific Plan to require that businesses obtain a conditional use permit prior to selling alcoholic beverages. It is requested that the Planning Commission hold a public hearing and consider recommending the City Council adopt the draft Ordinance.

As part of this year's work program, the City Council directed staff to explore options for further regulating businesses that sell or serve alcoholic beverages. This was done in an effort to gain some control over nuisance-type issues, such as noise, related to the proximity to residential areas, as well as overall safety issues related to the concentration of such businesses. Staff has met with the Economic Development Committee (EDC) on two occasions to review options for regulating those businesses. On March 11, 2009 the City Council conducted a pre-screen review, considered the recommendations of the EDC, and initiated a zoning ordinance amendment to require a Conditional Use Permit for businesses that sell or serve alcoholic beverages.

The intent of the Alcoholic Beverage Establishment (ABE) Ordinance is to establish procedures for the review of businesses that propose to sell or serve alcoholic beverages. These new provisions are intended to provide the City with the necessary tools to address concerns with compatibility of businesses with neighboring uses and the overall effect these businesses have on the safety and well being of the community. The draft ordinance is intended to address new businesses that desire to sell or serve alcohol. A separate ordinance applied to existing businesses will be introduced to the Planning Commission at a future date; however at this time staff is also requesting the Planning Commission provide feedback on what type of existing businesses such ordinance should apply.

II. STAFF ANALYSIS

The decision to pursue this ordinance was based on gaining control over new businesses, and to do so in a way that provided a great deal of flexibility to the City. Requiring a conditional use permit allows decisions to be made on a case by case basis, following a public hearing of any concerned neighbors.

Direction given to staff early in the process by the Economic Development Committee guided the decision to have the ordinance apply to all new Alcoholic Beverage Establishments. This is similar to most neighboring jurisdictions. While there is some variation among these communities as far as what is covered, every city between Ventura and Calabasas, as well as the Counties of Ventura and Los Angeles, require a Conditional Use Permit for businesses selling alcoholic beverages.

Given the wide variety of business types and possible issues related to proximity, it was decided that reviewing every new case would ensure the greatest degree of protection to the City, its residents, and its businesses. Similarly, it was further decided that each new

case should be considered against a set of general standards instead of specific standards. Each circumstance is unique, and giving the decision making body (the Planning Commission) the authority to decide whether the application was acceptable depends on a combination of operations and design. Creating standards that decide in advance what is appropriate may work for a number of situations, but would not cover them all.

Alcoholic Beverage Establishments vary widely in their mode of operation, and subtle differences in their operation and design can have significant consequences on surrounding uses. The CUP process gives the City the means to review the details of a particular business, and control the way it operates. The Planning Commission would be able to apply conditions to fit each application depending on its individual circumstances, to ensure that the business met the proposed list of findings. The findings are listed in Section 9396.3 of the proposed ordinance. Conditions dealing with such issues as noise, hours of operation, and security can be included in the CUP.

A copy of the draft ordinance is attached. The main changes proposed to the Zoning Ordinance are summarized as follows:

Sections 9120.1 and 9120.15 (Definitions)

The zoning code already has a definition of alcoholic beverage. New definitions were added for off-site and on-site alcoholic beverage establishments. The new definitions reference the appropriate State Alcoholic Beverage Control license categories. The new language also references adjacent areas controlled by the permittee to avoid confusion as to whether these areas are covered, which is currently a grey area.

Sections 9312.2 and 9312.3 (Commercial Use Table)

The new definitions are incorporated into the commercial use table, which lists all commercial uses permitted in each land use district. Several uses that are identified exclusively with the sale of alcoholic beverages, such as bars, liquor stores, and winery tasting rooms, are revised to reflect the new conditional use permit requirement.

Sections 9396.1, 9396.2, and 9396.3 (Standards for Specific Uses)

The main provisions of the new zoning controls are placed in these sections. Herein, off-site and on-site alcoholic beverage establishments are required to obtain a CUP, and findings for such applications are created, in addition to the existing CUP findings. Provisions within the findings have been included to allow consideration of both the method of operation, including hours of operation, as well as physical appearance and design. In addition to ensuring new businesses do not adversely affect neighboring residences, forethought would also be given to other sensitive uses, such as schools and play grounds. The concentration of businesses that sell alcoholic beverages would also be given consideration.

Section 9542.1 (FC Overlay District)

Currently all off-sale alcoholic beverage establishments are prohibited in the Freeway Corridor Overlay zone. The changes reflect the new definitions, as well as noting a change that will allow larger supermarkets and food stores in the Freeway Corridor

Overlay zone to off-sale alcoholic beverages. This is consistent with the original intent of the prohibition which was to discourage drinking and driving. Convenience stores and liquor stores are more readily associated with single item sales, not grocery stores, and would continue to be prohibited uses in the freeway corridor.

Section 9710 (Changes to Nonconforming Alcoholic Beverage Establishments)

The changes to this section define the provisions under which existing alcoholic beverage establishments may be considered nonconforming. Businesses that seek a change in their Alcoholic Beverage Control license status, such as changing from a beer and wine license to a general alcohol license, or increase the size of the floor area devoted to alcohol sales, would trigger the need to obtain a conditional use permit. Businesses that continue to operate in good standing, and do not expand or intensify their alcoholic beverage license or sales area may continue to operate without a conditional use permit.

Agoura Village Specific Plan, Chapter 4 (Permitted Uses and Prohibited Uses)

The recently adopted Agoura Village Specific Plan contains several specific items that need to be revised to be consistent with the changes proposed in the draft ordinance. Under the list of permitted uses, the new definitions of on-site and off-site alcoholic beverage establishments are added, noting that a Conditional Use Permit would be required. There does not appear to be any justification for allowing alcoholic beverage establishments by right within the Agoura Village area, especially if they are a conditional use throughout the remainder of the City. It was not the intent of the Agoura Village Specific Plan to prohibit all off-sale liquor sales. The prohibition came from a goal to be consistent with the Freeway Corridor Overlay Zone. Now that that section of the Zoning Code is being revised, new language is recommended for the Specific Plan. This new language will allow specialty stores to sell alcoholic beverages, but would continue to prohibit liquor stores within the Specific Plan area.

Staff has determined that the ABE ordinance is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Section 15061 (b)(3) wherein it states "the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." In this situation the proposed ordinance amendments do not make it so that specific uses could or could not be allowed, or that they are allowed in areas of the City where they are not currently permitted. The amendment only stipulates that such cases be reviewed in order to allow appropriate conditions to be applied to ensure neighborhood compatibility. There will not be more businesses or construction as a result. The potential for adverse change to existing physical conditions does not exist. If there was any overall effect from the proposed changes they would be beneficial. In addition, current zoning ordinance standards do not require any discretionary action for such uses to occupy existing buildings. As a result of the proposed ordinance amendments, any future application for a conditional use permit for an alcoholic beverage establishment will become subject to a discretionary decision which will make it subject to CEQA, giving the City the ability to better control potential harmful effects.

III. NEXT STEPS

Generally, when the zoning ordinance is amended, uses that no longer comply with the amended ordinance but were legal at the time the ordinance is adopted, are considered nonconforming and may continue to operate. The City Council expressed their interest in having the new provisions apply to certain existing ABE businesses, due to their potential impact on surrounding areas, including residential uses.

At this time we believe it would be advisable to proceed with the main body of the proposed amendments, as included in the attached draft ordinance, and return at a later date once staff receives feedback from the Planning Commission and City Council on which specific types of existing businesses should be addressed. At a minimum, additional legal questions need to be explored, and additional noticing needs to take place. In addition, staff is exploring ways to achieve some greater degree of enforcement against complaints within the existing framework of the Zoning Code. Thus, it may be possible to achieve the desired results without amending the nonconforming provisions. In fact, businesses with live entertainment are subject to the Conditional Use Permit requirement, and enforcement of the Conditional Use Permit and potential revocation are tools already available. However, the City may wish to consider existing ABEs that only have a County live entertainment permit to retroactively require a Conditional Use Permit for both alcohol sales and live entertainment.

Staff is seeking the Planning Commission's input on several options regarding ABEs. If the City proceeds with future amendments to require existing businesses to obtain a conditional use permit, it would be important to know the Planning Commission's interest in doing so, and whether it makes sense to apply such provisions to all existing businesses, or to choose those most likely to have impacts.

The Planning Commission could consider focusing the effort where the current conflicts exist, or where the potential for future issues are the greatest, rather than applying the standard to each of the 50 businesses currently in the City with liquor licenses. An argument could be made that businesses with the greatest potential for conflict are in the on-sale category, so focusing on bars, taverns, and restaurants could be considered. However, this leaves liquor stores in the nonconforming category. Further distinctions could be made between restaurants and bars, or businesses whose main focus is serving food compared to businesses whose focus is alcoholic beverages. It is also clear that certain off-sale ABEs, such as grocery stores, drug stores, and delicatessens/bakeries, have not posed land use compatibility problems in the past due to the nature of the business. Therefore, staff finds that it would not be necessary to further regulate such existing ABEs retroactively.

Based on past experience in the City, the combination of alcoholic beverage sales and live entertainment leads to the greatest potential for land use conflicts and safety concerns. Extending business hours beyond the typical time for dinner, and including music in the mix can increase the noise level beyond what neighbors expect in their

neighborhoods. Rather than having a focus on food, live entertainment may be exclusive of food service, which encourages patrons to stay longer, leading to a greater consumption of alcohol. This leads to secondary effects that further disrupt the quiet enjoyment of neighborhoods and requires enforcement.

Based on the above, the Planning Commission may wish to recommend to the City Council that the following types of existing businesses be subject to a Conditional Use Permit as alcohol beverage establishments: restaurants in which alcohol is served without food service, and establishments that have County live entertainment permits but no City of Agoura Hills Conditional Use Permit for live entertainment. With the Planning Commission's direction, staff will present the Planning Commission's recommendation on options for regulating existing businesses to the City Council and will return as soon as possible with a Zoning Ordinance Amendment. An amortization period will also be included as part of the Zoning Ordinance Amendment.

It should also be noted that the recommendation on the proposed ordinance amendment does not include any changes to the City's current review process. Most, if not all, alcoholic beverage establishments will be occupying existing buildings. The application review process for a Conditional Use Permit for them will not involve new construction, which will expedite the review process. Staff would expect most Conditional Use Permits for alcoholic beverage establishments to be able to come to the Planning Commission in a month or two. The component of the CUP process for ABEs that would consume the most time would be public notification which is the most critical part of the process. We do not recommend amending the process to facilitate these new applications nor do we believe the process would be unreasonably long for these businesses. Staff recommends the Planning Commission's concurrence regarding this matter.

IV. RECOMMENDATION

Based on the forgoing review and analysis, staff recommends that the Planning Commission hereby recommend the adoption of draft Ordinance Case No. 09-ZOA-002 to the City Council by approving the attached Resolution. Staff also recommends the Planning Commission's concurrence regarding the scope of a future Zoning Ordinance Amendment regarding the existing Alcoholic Beverage Establishments as noted in this report.

V. ATTACHMENTS

- Draft Resolution
- Draft Ordinance
- City of Agoura Hills: Existing Off-sale and On-Sale Alcohol Licenses

Case Planner: David Tabor, AICP, Planning Consultant

City of Agoura Hills - Off-Sale Licenses

Report as of 1/9/2009

Business Name	Address	Off-Sale License Type
REYES ADOBE LIQUOR	30313 CANWOOD ST	21 - General
AGOURA SHELL	5116 CHESEBRO RD	20 - Beer and Wine
AGOURA LIQUOR & DELI	5003 KANAN RD	21 - General
THE LIQUOR CHEST	5298 KANAN RD	21 - General
CVS PHARMACY 9751	5623 KANAN RD	21 - General
ITALIA DELI & BAKERY	5657 KANAN RD	20 - Beer and Wine
VONS 2001	5671 KANAN RD	21 - General
RALPHS 26	5727 KANAN RD	21 - General
RITE AID STORE 5539	5747 KANAN RD	21 - General
SUPER SAL AGOURA HILLS	5877 KANAN RD	20 - Beer and Wine
7 ELEVEN 2133 13882	5683 LAKE LINDERO DR	20 - Beer and Wine
FARHAD BENJAMIN ARYA *	4950 REYES ADOBE RD	20 - Beer and Wine
CRYSTAL GALLERY & ENGRAVING	28884 ROADSIDE DR	20 - Beer and Wine
PARTY HOUSE LIQUOR	29160 ROADSIDE DR	21 - General
SILVER STAR LIQUOR	30651 THOUSAND OAKS BLVD	21 - General
* No business name given; primary owner listed instead.		

City of Agoura Hills - On-Sale Licenses

Report as of 1/9/2009

Business Name	Address	On-Sale License type
PADRI	29008 AGOURA RD	47 - General for Restaurant 58 - Caterer's Permit
FABROCINI	29020 AGOURA RD	41 - Beer and Wine for Restaurant
CHAPTER 8 RESTAURANT AND LOUNGE	29020 AGOURA RD	47 - General for Restaurant
ADOBE CANTINA	29100 AGOURA RD	47 - General for Restaurant 58 - Caterer's Permit
ISLANDS FINE BURGERS DRINKS	29271 AGOURA RD	47 - General for Restaurant
CHUYS MESQUITE BROILER	29281 AGOURA RD	47 - General for Restaurant
RENAISSANCE LOS ANGELES AT AGOURA HILLS	30100 AGOURA RD	47 - General for Restaurant 58 - Caterer's Permit 68 - Portable Bar
CAPRICCIO ITALIAN RESTAURANT	30125 AGOURA RD	41 - Beer and Wine for Restaurant
TERRIS VALLEY CAFE	30135 AGOURA RD	41 - Beer and Wine for Restaurant

Table 3 - continued		
MOZ BUDDHA LOUNGE	30105 AGOURA RD A	47 - General for Restaurant
EXOTIC THAI BISTRO	29045 AGOURA RD B	41 - Beer and Wine for Restaurant
RT AH ASSOCIATES L-PSHIP *	28901 CANWOOD ST	70 - General Restrictive Service
THE MEATING PLACE	30313 CANWOOD ST	41 - Beer and Wine for Restaurant
CAFE 14	30315 CANWOOD ST	47 - General for Restaurant
JUAN CARLOS OROZCO *	30315 CANWOOD ST STORES 1-5	47 - General for Restaurant
SUSHI AGOURA	5015 CORNELL RD	41 - Beer and Wine for Restaurant
WOOD RANCH BBQ & GRILL	5050 CORNELL RD	47 - General for Restaurant
PIZZA HUT 103145	5146 KANAN RD	41 - Beer and Wine for Restaurant
SUSHI RAKU	5190 KANAN RD	41 - Beer and Wine for Restaurant
THE ALAMO MEXICAN GRILL & CANTINA	5617 KANAN RD	47 - General for Restaurant
5617 KANAN RD	5653 KANAN RD	41 - Beer and Wine for Restaurant
ANGEL CAFE	5687 KANAN RD	41 - Beer and Wine for Restaurant
CHRA FASL CUSINE	5843 KANAN RD	41 - Beer and Wine for Restaurant
CHINA STAR	5869 KANAN RD	41 - Beer and Wine for Restaurant
SUSHI & WASABI	5895 KANAN RD	41 - Beer and Wine for Restaurant
AGOURAS FAMOUS DELI & RESTAURANT	5915 KANAN RD	41 - Beer and Wine for Restaurant
LAKE LINDERO COUNTRY CLUB	5719 LAKE LINDERO DR	51 - Club
BLUE BAR AND RESTAURANT	5017 LEWIS RD	47 - General for Restaurant
LATIGO KID	28914 ROADSIDE DR 14-17	47 - General for Restaurant 58 - Caterer's Permit
WILLYS SMOKIN BBQ	28434 ROADSIDE DR	47 - General for Restaurant
YAMATO RESTAURANT	28700 ROADSIDE DR	47 - General for Restaurant
NUMERO UNO	28860 ROADSIDE DR	41 - Beer and Wine for Restaurant
CANYON CLUB	28912 ROADSIDE DR	47 - General for Restaurant 77 - Event Permit
MARIA ITALIAN KITCHEN	29035 THOUSAND OAKS BLVD	41 - Beer and Wine for Restaurant
WINNERS PIZZA	30684 THOUSAND OAKS BLVD	41 - Beer and Wine for Restaurant
* No business name listed. Primary owner listed instead.		