

## REPORT TO CITY COUNCIL

**DATE:** JULY 8, 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:** ADOPTION 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)

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At the June 24, 2009 City Council meeting, the Council introduced, read by title only, and waived further reading of Ordinance No. 09-362. 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.

The City Council approved the Zoning Ordinance Amendment on a 5-0 vote.

### RECOMMENDATION

Staff recommends the City Council adopt Ordinance No. 09-362, regarding amendments to the Zoning Ordinance relative to the on-sale and off-sale of alcoholic beverages.

Attachment: Ordinance No. 09-362

**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	<del>Alcohol, off-sale</del> <u>Alcoholic beverage establishments, off-sale</u>	W	W	W	W	W
3.6	<del>Alcohol, on-sale</del> <u>Alcoholic beverage establishments, on-sale</u>	<del>K</del> W	<del>K</del> W	<del>K</del> W	<del>K</del> W	<del>K</del> W
3.65	<del>Alcohol, on-sale consumption as an incidental service to a bona fide eating establishment</del>	X	X	X	X	X
B.						
3.	Bar, tavern	<del>X</del> W	<del>X</del> W		U W	
C.						
<del>2.</del>	<del>Café/restaurant</del>	<del>X</del>	<del>X</del>		U	<del>X</del>
L.						
14.	Liquor store	<del>X</del> W	<del>X</del> W		<del>G,U</del> W	<del>G</del> W
W.						
6.	Winery sales facility/tasting room	<del>X</del> W	<del>X</del> W			<del>X</del> 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 wholesale sales, and 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 wholesale sale of alcoholic beverages or 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.

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