

REVISED MOTION BY SUPERVISORS MARK RIDLEY-THOMAS AND CHAIR HILDA L. SOLIS

MAY 24, 2016

“Deemed Approved” Provisions for Pre-1992 Liquor Licenses

In 1992, the Board of Supervisors (Board) adopted an ordinance amending Title 22 (Planning and Zoning) of the Los Angeles County Code that required a Conditional Use Permit (CUP) for any business that wants to start selling alcohol for the first time, or expand existing alcohol sales, for either on-site or off-site consumption. The ordinance specified that such CUPs could only be approved if the reviewing authority made specific findings regarding neighborhood compatibility, potential effects on nearby sensitive uses, and undue concentration of similar premises. Such CUPs can include conditions to ensure neighborhood compatibility, such as limitations on signage, operating hours, and the display of retail items. Due to limitations placed on the Los Angeles County (County) by State law, the ordinance's CUP requirements did not apply to businesses which were already selling alcohol at the time the ordinance was adopted.

The 1992 ordinance recognized that alcohol sales uses, such as retail stores, restaurants, bars, and nightclubs, can have negative impacts on the surrounding neighborhood and provided a regulatory framework to prevent those effects. Over the last 24 years, the requirement of a CUP has proven to be a valuable tool for achieving the goals of the 1992 ordinance, but after 24 years of implementing this policy, there is broad agreement that it is now necessary to amend Title 22 to incorporate lessons learned and to address emerging issues that continue to impact neighborhoods in the County. These amendments fall into four categories.

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MOTION BY SUPERVISOR MARK RIDLEY-THOMAS AND CHAIR HILDA SOLIS
May 24, 2016
Page 2

First, existing Title 22 provisions, ~~especially those related to undue concentration of similar premises, are difficult for the public to understand and should be clarified~~ require in some circumstances that the hearing officer determine whether an "undue concentration" of similar premises exists. However, the understanding of the land use impacts resulting from a concentration of alcohol sales uses has evolved significantly since 1992, and the ordinance should be updated to provide additional standards for making an "undue concentration" finding based on the current understanding of those land use impacts. ~~However~~ In addition, these amendments updated standards must not change the intent of the 1992 ordinance to require additional findings for CUPs that establish and regulate new alcohol sales uses located within a ~~6500-foot~~ 6500-foot radius of an existing alcohol sales use.

Second, existing Title 22 provisions limit the display of alcoholic beverages to five percent of the shelf space within new retail stores that are located within a ~~6500-foot~~ 6500-foot radius of an existing ~~retail store~~ facility that sells alcoholic beverages. This shelf space limitation ensures that the store sells other products for neighborhood residents. However, ~~one size does not fit all~~ as written, Title 22 provisions do not differentiate between types of alcohol uses, such as restaurants and retail outlets, which often have different land use impacts. In addition, the five-percent shelf-space has, in some circumstances, discouraged existing retail outlets from altering their alcohol sales in ways that would improve land use impacts for fear of triggering a five-percent shelf-space limitation. The ordinance should provide the reviewing authority with standards to apply in determining the appropriate shelf-space limitation in certain cases. For example, it may be appropriate to allow the reviewing authority to modify this limitation if ~~it makes specific findings such as that the store is not in a high crime area or that, if it is a specialty retailer with a unique product mix, or if it is an existing retailer seeking to reduce overall alcohol sales.~~ A CUP requirement with a public hearing must continue to be required to allow for neighborhood input, and the Regional Planning Commission would have discretion to determine appropriate shelf space limitations.

MOTION BY SUPERVISOR MARK RIDLEY-THOMAS AND CHAIR HILDA SOLIS
May 24, 2016
Page 3

Third, there is growing awareness of how “food deserts” (lack of access to healthy food) and “food swamps” (overabundance of unhealthy food) in urban areas like unincorporated South Los Angeles, as well as rural areas such as portions of the unincorporated Antelope Valley, affect the health and well-being of County residents. Those areas also typically have the highest concentration of retailers selling alcoholic beverages. Requiring retailers who request an entitlement to sell alcoholic beverages, to also sell healthy foods, such as fresh produce and whole grains, could be a major step toward improving access to healthy foods in impacted communities. ~~At a minimum,~~ It also makes sense to offer incentives, such as additional signage or longer operating hours, for retailers who do so.

Lastly, and most importantly, the existing Title 22 provisions do not address alcohol sales uses that were established prior to 1992. Since these uses did not require a CUP, they are not subject to conditions to ensure neighborhood compatibility and prevent negative effects. Generally, the County’s experience has been that the most problematic alcohol sales uses are those established prior to 1992. A recent shooting at a liquor store in Willowbrook is a tragic reminder of the public safety issues at stake. Although there are limitations in State law, other jurisdictions, such as the City of Oakland, have adopted “deemed approved” provisions, which have withstood legal challenge, and if adopted, will help the County stop detrimental land use impacts caused by problematic and irresponsible alcohol sales uses established before the County’s CUP requirements. Title 22 must include “deemed approved” provisions to provide more tools to County staff so that they can better protect our unincorporated neighborhoods.

WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

Direct the Director of Regional Planning to take the following actions:

1. In consultation with the Acting or Interim Director of the Department of Public Health and County Counsel, prepare an ordinance amending Title 22 (Planning and Zoning) of the Los Angeles County Code to clarify existing provisions related

MOTION BY SUPERVISOR MARK RIDLEY-THOMAS AND CHAIR HILDA SOLIS

May 24, 2016

Page 4

to alcohol sales uses currently located in Section 22.56.195, including but not limited to those regarding undue concentration and the trigger for the alcoholic beverage shelf space limitation; allow the reviewing authority to modify the alcoholic beverage shelf space limitation pursuant to specific findings; require ~~or~~ and incentivize the sale of healthy food at retail stores that sell alcohol; add “deemed approved” provisions for alcohol sales uses established prior to the County’s Conditional Use Permit (CUP) requirement; and include any additional amendments that may be recommended pursuant to further study and public outreach;

2. In consultation with County Counsel, conduct an appropriate environmental analysis for such an ordinance pursuant to the California Environmental Quality Act (CEQA), the County’s CEQA Guidelines, and the County’s Environmental Document Reporting Procedures and Guidelines;
3. In consultation with the Sheriff, County Counsel, District Attorney or their designees, and representatives from other agencies involved with nuisance abatement, conduct an assessment of any additional resources necessary to properly implement and enforce the “deemed approved” provisions for alcohol sales uses established prior to the County’s CUP requirement;
4. Review and update the standard conditions that the Department of Regional Planning (Department) recommends for CUPs for alcohol sales uses and reformat them into a document that will be posted on the Department’s Website and made available to prospective applicants and the public;
5. Conduct outreach to interested parties, including but not limited to neighborhood organizations, Town Councils, chambers of commerce and merchants’ associations, public health advocates, and other stakeholders; and
6. Present the ordinance, environmental analysis, additional resource assessment, and standard conditions document to the Regional Planning Commission at a duly-noticed public hearing within the next nine months. If necessary to complete

any required studies or analysis, the Director of Regional Planning may separate the healthy food component of the ordinance and present that final proposed ordinance to the Regional Planning Commission at a later time. If the Director of Regional Planning determines that separating the healthy food component of the ordinance is necessary, the Director of Regional Planning shall make a presentation to the Regional Planning Commission within the next nine months describing the efforts to date and any remaining studies or analysis which must be completed, and an estimated timeframe for presenting the completed healthy food component of the proposed ordinance to the Regional Planning Commission.

WE FURTHER MOVE TO:

7. Direct the Interim Director of Public Health to report back to the Board in 90 days with information on existing efforts coordinated by the Department of Public Health to support healthy food sales in retail stores located in food deserts and food swamps within the County, the additional resources that would be needed to expand efforts targeting these retailers, best practices from other jurisdictions addressing healthy food sales in retail stores, and on a strategy and methodology to receive input from community members and stakeholders.

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