

Supplemental Agenda Item No. 26-1

“To Be Delivered” Material For City of Sacramento City Council Financing Authority Housing Authority Redevelopment Agency Agenda Packet

Submitted: October 26, 2009

For the Meeting of: October 27, 2009

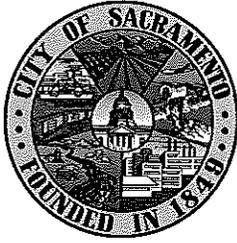
The attached materials were not available at the time the Agenda Packet was prepared.

Title: INTERIM ORDINANCE FOR BEVERAGE BOTTLING PLANTS

Recommendation: **Either:** **A:** Take No Action; or **B:** Adopt a **Motion** Referring the Interim Ordinance for Beverage Bottling Plants to the Law and Legislation Committee for review and recommendation; or **C:** Hold a Public Hearing and Adopt a **Motion** 1) Waiving Review of the Interim Ordinance for Beverage Bottling Plants by the Law and Legislation Committee; Adopt a **Resolution** 2) Determining that Adoption of the Interim Ordinance for Beverage Bottling Plants is Exempt from Review under CEQA; and Adopt an **Ordinance** 3) Interim Ordinance on an Urgency Basis Amending Table 17.24.040B of Section 17.24.040 of Title 17 of the Sacramento City Code (the Zoning Code) Relating to Beverage Bottling Plants to Take Effect Immediately (six votes required).

Contact Information: David Kwong, Acting Director of Community Development,
(916) 808-2691

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REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Public Hearing
October 27, 2009

**Honorable Mayor and
Members of the City Council**

Title: Interim Ordinance for Beverage Bottling Plants

Location/Council District: Citywide

Recommendation: Either: A: Take No Action; or **B:** Adopt a **Motion** Referring the Interim Ordinance for Beverage Bottling Plants to the Law and Legislation Committee for review and recommendation; or **C:** Hold a Public Hearing and Adopt a **Motion** 1) Waiving Review of the Interim Ordinance for Beverage Bottling Plants by the Law and Legislation Committee; Adopt a **Resolution** 2) Determining that Adoption of the Interim Ordinance for Beverage Bottling Plants is Exempt from Review under CEQA; and Adopt an **Ordinance** 3) Interim Ordinance on an Urgency Basis Amending Table 17.24.040B of Section 17.24.040 of Title 17 of the Sacramento City Code (the Zoning Code) Relating to Beverage Bottling Plants to Take Effect Immediately (six votes required).

Contact: David Kwong, Acting Community Development Department Director,
(916) 808-2691

Presenters: David Kwong

Department: Community Development Department

Division: Not Applicable

Organization No: 21001

Description/Analysis

Issue: Whether to adopt an interim ordinance on an urgency basis to require a special permit for beverage bottling plants to take effect immediately. The ordinance would apply to expansion of existing beverage bottling plants and establishment of new beverage bottling plants. Once adopted, building permits cannot be issued until a special permit is granted to allow for expansion or establishment of such use. There are three existing beverage bottling plants in the City, Coca Cola, Alhambra and Dr. Pepper/Snapple (7-Up).

A new beverage bottling plant has been proposed by Nestle within a portion of an existing warehouse building located at 8670 Younger Creek Drive. Nestle will need three building permits and an encroachment permit to connect a new water

line in the City's street right of way before manufacturing operations can commence. The first permit has been issued and construction work under that permit has been substantially completed. The second "primary" permit and the encroachment permit are expected to be issued within the next two weeks. The third permit to allow for the bottling equipment to be installed is expected to be issued by the end of November.

The interim ordinance would not apply to Nestle's development of this new plant if either: (i) it is determined that the first permit was sufficient to vest Nestle's rights to receive the subsequent building permits without the need for prior issuance of a special permit, or (ii) the second "primary" permit is issued and substantial work commences thereunder before the date of adoption of the ordinance. The second permit allows for modification of the existing building and extension of water lines to allow for the manufacturing equipment to be installed and operated.

For the proposed interim ordinance to be adopted on an urgency basis and to take effect immediately, six affirmative votes of the Council is required to approve adoption of the ordinance.

Policy Considerations: Development of beverage bottling plants has not been addressed as a policy matter previously in any existing City plans or reports.

Environmental Considerations:

California Environmental Quality Act (CEQA): Under the California Environmental Quality Act (CEQA) Guidelines Section 15378(a)(1), in defining a "project" subject to environmental review under CEQA, a public agency's enactment or amendment of a zoning ordinance is subject to environmental review if the action has the potential for resulting in either a physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Since the proposed ordinance would impose additional review of a beverage bottling plant before it may be developed or expanded, such action is not an activity that would be subject to environmental review.

Taking no action, and thereby allowing beverage bottling plants to be developed without any discretionary review under the current Zoning Code, is not subject to environmental review, even though Nestle's development will result in a physical change to the environment, because CEQA does not apply to projects that need only a ministerial permit and issuance of building permits and the encroachment permit is considered ministerial (Guidelines Section 15268). In addition, taking no action is exempt from environmental review because CEQA does not apply to proposed actions that are not approved (CEQA Guidelines Section 15270).

Sustainability Considerations: Although some groups, such as Save Our Water, claim that water bottling plants consume large quantities of water, which it believes is wasteful and inconsistent with sustainability policies, the City has not made a similar determination.

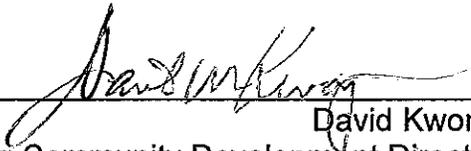
Commission/Committee Action: The City Council is being requested to approve this ordinance bypassing the review of the Law and Legislation Committee. Due to the urgency in considering the ordinance by the City Council, the proposed ordinance was not submitted to the Planning Commission for review and recommendation.

Rationale for Recommendation: Council Members McCarty and Hammond requested staff to submit the proposed ordinance to the Council for consideration.

Financial Considerations: There are no financial considerations related to the proposed action. Applicants pay a fee for special permits which cover the City's staff costs.

Emerging Small Business Development (ESBD): The proposed action does not have any emerging small business contracting opportunities.

Respectfully Submitted by:


David Kwong
Acting Community Development Director

Recommendation Approved:

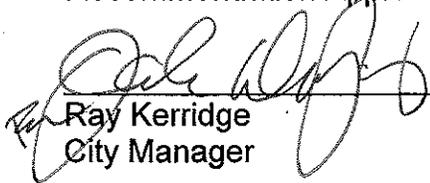

Ray Kerridge
City Manager

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Attachment 1**Background**

Nestle Project - Nestle will need three building permits and an encroachment permit to undertake all of the work needed to operate a beverage bottling plant at 8670 Younger Creek Drive within a portion of an existing 584,820 sq.ft. warehouse building. The first permit (Phase I) was issued for the Nestle Waters Bottling Plant (Nestle) project on October 7, 2009 (COM-0907968) to Panattoni Construction (contractor) for interior demolition, underground plumbing and the construction of a few demising walls. This permit was applied for on July 27, 2009. The value of the work under this permit was \$631,850 and the work under this permit has been substantially completed. Previously, the building owner was issued a Facilities Permit Program Master permit on July 7, 2009 (COM-0907135), at a cost of \$150 to place this building in the Facility Permit Program (FPP), which allows for streamlining of plan review and permit issuance for the planned Nestle improvement project.

The second "primary" permit (Phase II) was applied for on August 21, 2009, but it has not yet been issued (COM-0909134). This second permit covers the interior improvements for the 8,155 sq. ft. office space, 59,338 sq. ft. factory use and 146,941 sq. ft. warehouse. This permit includes the water line relocation and new waterline installation, which will also need an encroachment permit to connect that line to the main water line in the City's right of way. This permit application is currently in its second cycle of review and it is expected to be issued on November 10th, after the encroachment permit has been issued. The value of work under the second permit is \$2,145,842. The contractor had advanced work beyond the scope of the first permit at its own risk to undertake the office tenant improvements and preliminary work for installation of the bottling equipment. The work was stopped on October 23, 2009 to allow for review of the project status if the ordinance is enacted.

The third permit (Phase III) has been submitted for review (COM-0910911) and that application is expected to be issued shortly. This permit's scope of work is for the installation of all the bottling equipment and process piping within the building after the interior improvements and water lines have been installed.

Current Zoning Code - Under the existing Zoning Code, a beverage bottling plant is allowed as a permitted use in the City's industrial zones (C-4, M-1, and M-2) and certain setback and design requirements are imposed for such uses in the M-1(S) and M-2 (S) zones. The proposed change to the Zoning Code would impose a special permit requirement for beverage bottling plants.

CEQA - A special permit is a "discretionary" permit under the California Environmental Quality Act (CEQA) and a project requiring such a permit would be subject to environmental review before the permit could be approved. Based on the CEQA Guidelines and an Initial Study, the project could either fall under an exemption or require preparation of either a Negative Declaration (or Mitigated Negative Declaration) or an Environmental Impact Report if the project's impacts could not be fully mitigated

to a less than significant level.

Special Permit Review - As stated in Zoning Code (Section 17.21.2010): "A special permit is a zoning instrument used primarily to review the location, site development, or conduct of certain uses. These are uses which generally have a distinct impact on the area in which they are located, or are capable of creating special problems for bordering properties unless given special attention." The primary basis of approval or denial is whether the physical development or the use would be "detrimental to the public health, safety or welfare, or if it results in the creation of a nuisance." If the proposed ordinance is enacted, these are the subject matters that would be considered by the Planning Commission and City Council in approving or denying such a permit.

Vested Rights - The Zoning Code (Section 17.212.100.B) provides that: "A special permit use which requires a building permit shall be deemed established when such building permit is secured and construction thereunder physically commenced." All of the building permit applications Nestle has or will submit are to establish a water bottling manufacturing facility. It is uncertain if the first permit is sufficient in scope to establish such vested rights. In addition, if the second building permit is issued and construction commences prior to the effective date of the interim ordinance, if adopted, then Nestle may have a "deemed special permit" under the Zoning Code. If Nestle's rights have been vested, Nestle would only be subject to the discretionary special permit review process if it expanded its operations in the future. Expansion is any change in the nature of the use or an increase in the gross floor area of the building by 25% (Section 17.212.070.B).

Special Permit Revocation - A special permit can only be revoked if the use "is being conducted in a manner detrimental to the public health, safety or general welfare, or in such a manner as to create a public nuisance." (Section 17.212.080). A "public nuisance" is defined in the Civil Code (Section 3480) as "one which affects at the same time an entire community of the neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

Process for Adoption - An interim ordinance is enacted on an urgent basis and can take effect immediately, in order to either prohibit uses or impose new requirements on certain types of developments, when the Council is considering a contemplated change in the Zoning Code which would affect such use. An interim ordinance adopted on an urgent basis does not require review by the Planning Commission or to be Passed for Publication before it can be enacted.

Under the Council Rules of Procedure, ordinances do not require review and recommendation by Law and Legislative Committee if they are either deemed urgent by the Mayor or City Manager, or the Council by a majority vote decides to bypass the Committee. Since neither the Mayor nor the City Manager has made this determination, the Council would need to approve a motion by a majority vote to waive the Law and Legislative Committee review process in order to adopt the ordinance at this meeting.

An interim ordinance adopted on an urgent basis to take effect immediately requires at least six affirmative votes for passage.

Water Service - Under the City Charter and City Code, the Department of Utilities provides water service to the City's water service area, which includes all areas located within the City limits. California law requires water suppliers to serve water demands within their service areas, unless limitations on new service connections are made necessary due to a limited water supply. (See *Swanson v. Marin Mun. Water Dist.* (1976) 56 Cal. App. 3d 512.) The City delivers approximately 135,000 to 150,000 acre feet of water per year. The Nestle operation will consume about 250 acre feet of water per year, less than 0.2% of the City's current demand. The City has issued a "will serve" letter to Nestle because the City has sufficient water supplies, and therefore, is required to supply the water requested.

Water Rates - Any proposal to adopt a tiered rate structure for all or some of the City's water service customers would be subject to Proposition 218's notice and protest procedures, the same as any other proposal to adopt or increase utility service rates. Proposition 218 also specifies substantive mandates requiring that any water rates adopted by the City Council be structured so that: (1) rate revenues do not exceed the amount required to provide the water service to which the rate structure applies; and (2) the rate imposed on each customer does not exceed the proportional cost of service attributable to that customer. In addition, Proposition 218 prohibits using such rate revenues for any purpose other than funding the direct and indirect costs incurred by the City to provide the service the rates are charged for.

Attachment 2

RESOLUTION NO.
Adopted by the Sacramento City Council

**DETERMINING THAT ADOPTION OF THE INTERIM ORDINANCE
FOR BEVERAGE BOTTLING PLANTS IS EXEMPT FROM REVIEW UNDER CEQA**

BACKGROUND

- A. The City Council is considering the adoption of a change to Title 17 of the City Code (the Zoning Code) to require beverage bottling plants to obtain a special permit prior to development or expansion of such use.
- B. Due to the pending development of a new beverage bottling plant and the potential for other similar businesses to locate in the City of Sacramento due to its available water supplies, its low water rates, and the lack of a discretionary review process for such uses under the City's current Zoning Code; the City Council desires adoption of an interim ordinance to become effective immediately because it is urgent that the proposed Zoning Code change become applicable to the establishment or expansion of beverage bottling plants.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. The proposed Interim Ordinance amending Table 17.24.040B of Section 17.24.040 of Title 17 of the Sacramento City Code (the Zoning Code) Relating to Beverage Bottling Plants to Take Effect Immediately, would impose additional review of a beverage bottling plant before such plant may be developed or expanded.
- Section 2. The action to adopt this ordinance is not an activity that would be subject to environmental review under the California Environmental Quality Act (CEQA) for the following reasons. Pursuant to the CEQA Guidelines Section 15378(a)(1), a "project" subject to environmental review may include a public agency's enactment or amendment of a zoning ordinance. However, the proposed ordinance does not have the potential for resulting in either a physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, because under the ordinance beverage bottling plants could not be developed or expanded unless a special permit was issued. A beverage bottling plant could not be issued a special permit until that project, and its direct and indirect environmental affects, was reviewed in accordance with CEQA. If the ordinance is not adopted, beverage bottling plants could be developed or expanded without any environmental review.

ORDINANCE NO.

Adopted by the Sacramento City Council

**INTERIM ORDINANCE AMENDING TABLE 17.24.040B OF SECTION 17.24.040
OF TITLE 17 OF THE SACRAMENTO CITY CODE (THE ZONING CODE) RELATING TO
BEVERAGE BOTTLING PLANTS TO TAKE EFFECT IMMEDIATELY**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO

SECTION 1. The City Council of the City of Sacramento finds and declares as follows:

- A. There has been some concerns raised by community members that the large consumption of water by beverage bottling plants may adversely affect the City's existing and future supplies of water in light of the fact that:
- (i) The City is currently requesting its water consumers to conserve their water usage;
 - (ii) The planned growth of the City under the 2030 General Plan will require construction of additional facilities to increase the quantity of water needed to serve City residents and businesses;
 - (iii) Global warming and climate change could affect the future supply of water available to the City to serve its customers;
 - (iv) The City's current water rates are comparatively low for large water consumers, making bottling plants cost competitive because the manufacturer can resell the water for roughly 10 times more than the what it cost to purchase;
 - (v) It is difficult under Proposition 218 to increase the City's water rates;
 - (vi) Some community members have claimed that the three existing beverage bottling plants are among the top 20 water consumers in Sacramento, and that they have all increased their water usage between 2006 and 2008;
 - (vii) The City's current Zoning Code does not require beverage bottling plants to obtain any discretionary permits, which would subject such uses to environmental review;

- (viii) Due to these favorable water supply, water rate and Zoning Code conditions, Nestle has applied for building permits to establish a new beverage bottling plant in the City that would consume 250 acre feet of water per year. The existing beverage bottling plants in the City may also desire to expand their operations as consumers increase their demand for bottled water and other beverage products that rely on the supply of large quantities of City water. In addition, other beverage bottling companies may desire to locate manufacturing plants in the City; and
 - (ix) Additional bottling plants and expansion of existing plant operations could create potential cumulative impacts on the City's water supply. Such cumulative effects may trigger the need for building new water intake facilities and/or new groundwater wells to increase the supply of water to serve the City's customers, and/or the need for imposition of additional water conservation measures and water restrictions in the future.
- B. The City needs to evaluate the potential for expansion of existing beverage bottling plants and the potential for establishment of new bottling manufacturers in the City to properly evaluate whether such cumulative effects on the City's water supply could materialize in the future.
 - C. The City needs to evaluate whether beverage bottling plants may have other affects on the environment based on: (i) their location, site development, or conduct of operations; (ii) if there would be a distinct impact on an area in which the use was located; or (iii) if the use was capable of creating special problems for bordering properties unless given special attention.
 - D. For all of the foregoing reasons, the City Council desires to impose a special permit requirement before a beverage bottling plant may be developed or expanded in order to study the need for a permanent change to the Zoning Code in regards to the review and approval, or conditional approval, of beverage bottling plants.
 - E. The City Council finds that it is urgent that this amendment to the Zoning Code take effect immediately so that all beverage bottling plants will be subject to discretionary review by the Planning Commission or City Council before establishment or expansion. Section 17.212.020 of the Zoning Code provides that building permits may not be issued for uses that require a special permit until such permit is granted and during the period of any appeal therefrom is pending, unless the provisions of Section 17.212.100.B apply.

SECTION 2. Section 17.24.040 of Title 17 of the Sacramento City Code (the Zoning Code) is amended as follows:

- A. Table 17.24.040B of Section 17.24.040 is amended by changing the footnote from X to 5, thereby imposing a requirement to obtain a special permit to locate a beverage

bottling plant in the particular zone as follows:

Use	E C	H C	S C	C 1	C 2	C 3	C 4	M 1	M 1 (S)	M 2	M 2 (S)	M 1 P	M R D	H	S P X	T C	A	A O S	F	A R P-F
Beverage bottling plant							5	5	5/20	5	5/20									

B. Except as specifically amended by the change in footnotes for a beverage bottling plant in Table 17.24.040B, all other provisions of Section 17.24.040 remain unchanged and in full force and effect.

SECTION 3. This ordinance is enacted by the City Council as an interim ordinance, without notice and hearing before the Planning Commission and City Council as otherwise required by Section 17.208.010 of the City's Zoning Code. It is anticipated that permanent, comprehensive regulations governing beverage bottling plants, consisting of amendments to the Zoning Code, will be processed in the manner required by Section 17.208.010 within 365 days, and this interim ordinance will be repealed at that time.

SECTION 4. This ordinance shall take effect immediately after enactment.