# REPORT TO LAW & LEGISLATION COMMITTEE
# City of Sacramento

**915 I Street, Sacramento, CA 95814-2671**

**3**

**Staff Report**
**December 18, 2007**

Honorable Members of the
Law and Legislation Committee

**Title: Alcohol Sales and Nuisance Abatement Ordinance (M07-069)**

**Location/Council District:** Citywide

**Recommendation:** Staff recommends the Law and Legislation Committee approve the ordinance adding Chapter 8.10 to Title 8 (Health and Safety Code), amending sections 17.16.010, 17.24.030A and 17.24.050 of Title 17 (Zoning Code) and adding Chapters 17.86 and 17.230 to Title 17 and forward to the full City Council with recommendation for approval.

**Contact:** Sherri Scruggs, Program Analyst (916) 808-0710; Chris Dougherty, Assistant Planner (916) 808-5680

**Presenters:** Mike McCarthy, Captain (916) 808-0700, Chris Dougherty, Assistant Planner (916) 808-5680

**Department:** Police and Development Services

**Division:** Metro/Current Planning

**Organization No:** 2123/4885

**Description/Analysis**

**Issue:** Sacramento has had a recent surge of new restaurants opening citywide, which has been an exciting opportunity for both local residents and tourists alike. However, to ensure continued public safety to coincide with our local business growth, staff is proposing a pro-active plan which has been successful in other cities. Our goal is to modify the existing City Code to include specific provisions similar to Los Angeles' ordinance regarding problem uses, with an emphasis on facilities engaged in the sale of alcohol, for on-premises or off-premises consumption. Currently, the City of Sacramento Code is too broad, which creates loopholes within the alcohol licensing process. The proposed Ordinance would amend certain sections of Title 17 of the City Code and add chapter 8.10

to Title 8 of the City Code to establish an education, outreach, and monitoring program for businesses engaged in the sale of alcoholic beverages.

This proposed ordinance will continue to require a special permit for all newly established alcoholic beverage commercial activities, with the exception of a full service restaurant, and establishes a process in order to provide standards and an administrative hearing process to review violations of those standards. In order to protect the general health and welfare of the residents of the City and to prevent all nuisance activities, with a focus on those engaged in the sale of alcoholic beverages, the ordinance would provide for an alcohol sales permit fee for the purpose of funding alcohol regulation, compliance enforcement and education programs. A fee structure to be paid by Alcoholic Beverage Control (ABC) license holders in the City, would allow a dedicated team of Police Officers to educate, monitor and enforce the code.

**Policy Considerations:** This report is consistent with policies associated with the City's mission to protect, preserve, and enhance the quality of life for present and future generations. The proposed Alcohol Sales and Nuisance Abatement Ordinance will contribute to the City of Sacramento's vision to be the most livable city in America.

**Committee/Commission Action:** This item has been heard by the Law and Legislation Committee on September 20th, 2005. The Committee directed staff to draft an ordinance and conduct community outreach.

**Environmental Considerations:** The proposed ordinance is not considered a project, as it has no potential for a significant effect on the environment, and is therefore exempt under CEQA Guidelines section 15061(b)(3).

**Rationale for Recommendation:** The adoption of the Alcohol Sales and Nuisance Abatement Ordinance will put in place a framework and a program to give the City of Sacramento the authority to police ABC license holders to better address neighborhood concerns and help to mitigate the negative impact on public health that is usually associated with alcohol sales facilities. The Police Department conducts a wide range of alcohol regulation, compliance, enforcement, and education programs in the City. The impact of alcohol sales and consumption has had a disproportionate negative impact on public safety.

**Financial Considerations:** An annual regulatory fee will be established and imposed to fund the cost of administering the Education, Outreach and Monitoring Program. The proposed annual fee is based on the direct cost to the City to operate the program, shared equally by each alcohol beverage license holder. Although this Committee is not taking action on the regulatory fee, the following information illustrates a range of costs and services.

Based on the requirements within the ordinance, coupled with the volume of ABC license holders, staff will request a proposed fee of $750.00, and a re-inspection fee of $250.00, paid by each location selling alcohol. This will fully offset the cost of the

program, estimated at approximately $680,442. Program costs include an increase in FTE's by adding 1 Sergeant, 3 Officers, and 1 CSO to the Police Department. The Finance Department, Revenue Division, will add 1 FTE for a Customer Service Representative.

An alternative annual fee of approximately $338.00 for each alcohol beverage license holder would allow the minimum level of service included in this ordinance. This fee would fund 1 Police Officer, 1 Community Service Officer, and 1 Customer Service Representative.

Additionally, staff is researching a process to recognize responsible vendors with a reduction of the annual fee.

City Council will establish the fee by resolution and shall hold at least one public hearing on the fees prior to adoption. If adopted, staff will come to City Council annually to report back on fees.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased under this report.

Respectfully Submitted by: David W. Kwong
David Kwong
Planning Manager

Respectfully Submitted by: Mike McCarthy
Mike McCarthy
Captain

Approved by: William Thomas
William Thomas
Director of Development Services

Approved by: Albert Najera
Albert Najera
Chief of Police

Recommendation Approved:

for Patti Bishardt

RAY KERRIDGE
City Manager

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Attachment 1

**Background**

Historically, alcohol sales and consumption have had a disproportionate negative impact on the public, health, safety, and welfare of the community. The Sacramento Police Department (SPD) continues to work in close partnership with community groups and the Department of Alcoholic Beverage Control (ABC) to address alcohol-related problems within the City of Sacramento. These problems include a high percentage of; alcohol-related traffic accidents and fatalities, neighborhood and community complaints regarding ABC licensed businesses and events, underage and excessive drinking, public drunkenness, and alcohol-related crime.

If enacted, the ordinance would do the following:

- Modify the Zoning Code definitions of bar and restaurant, including the category of a "Full Service Restaurant". A restaurant would be considered a "Restaurant with Alcohol Sales: Full Service Restaurant" if it has a real kitchen, serves meals, obtains at least 35% of its gross receipts from the sale of meals and non-alcoholic beverages or products, and submits evidence of meal and product sales to City officials upon request to determine if the business meets the requirements under the code.

- Modify the land use matrix of the Zoning Code to delete the restaurant category and add in its place the categories of: (1) "Restaurant without Alcohol Sales"; (2) "Restaurant with Alcohol Sales: Full Service"; and (3) "Restaurant with Alcohol Sales: Other than Full Service". A "Restaurant with Alcohol Sales Other than Full Service" would require a Planning Commission Special Permit. This is similar to a bar which also requires a Planning Commission Special Permit. Footnote 40 of the matrix is also modified to reference a new chapter on alcoholic beverage sales (17.86).

- Add a separate chapter to the Zoning Code (17.86) to provide criteria for the consideration and approval of special permits for new alcoholic beverage sales commercial activity and for any significant changes in the operation or character of existing facilities engaged in the sale of alcoholic beverages. The chapter includes the requirement that a full service restaurant make its books and records available for review by City officials to determine if the business meets the requirements of a full service restaurant. The information previously found in Footnote 40 of the land use matrix is now found in this chapter.

- Add a separate chapter to the Zoning Code (17.230) to provide an administrative nuisance abatement process. Proceedings to seek the modification, discontinuance or revocation of any use or discretionary zoning approval may be initiated by the Planning Director and the Code Enforcement Director; the Chief of Police would have authority to <u>only</u> initiate proceedings against problem uses engaged in the sale of alcoholic beverages. The procedure calls for hearings

before an administrative hearing officer, with appeals taken to the Planning Commission (and in the case of discontinuance or revocation, the City Council). After conducting a hearing, the administrative hearing officer has the authority to impose conditions of operation to address the nuisance activity of a business or use; the hearing officer is also authorized to revoke a special permit or order a use discontinued, if the nuisance activity is not abated following one or more proceedings.

- Add Chapter 8.10 to Title 8 of the City Code (Health and Safety) that establishes inspection and education programs for businesses engaged in the sale of alcoholic beverages. Annual fees are to be imposed on the businesses to fund the inspection and education programs.

- Amend the existing special permit modification/revocation provisions of the Zoning Code by adding a section that allows the Code Enforcement Director and the Chief of Police, in addition to the Planning Director, to initiate proceedings for modification or revocation of the special permit where the use is engaged in the sale of alcoholic beverages.

- Repeal the existing provisions of the Zoning Code (17.212.090) that provide for modification and discontinuance of uses established prior to special permit requirements. The administrative nuisance abatement process reference in the fourth bullet replaces this section.

ABC licenses in the City

There are 925 wholesale and retail businesses licensed by the State Department of Alcoholic Beverage Control to sell alcohol in the City. This is approximately one license for every 486 persons, which is 30 % higher than the state average of licenses per capita.

There are 899 locations identified for the primary license types within the City.

| | |
|---|---|
| On-site sale – Full Service Restaurant | 546 |
| On-site sale – public premises (bar) | 47 |
| Off-site sale – (grocery store, mini-marts, etc) | 306 |
| Wholesale- (winegrowers, distilled spirit manufacturer, etc) | 26 |

Each of these locations requires alcohol licensee compliance with ABC and City ordinances, on-site inspections, training of owners, employees, and community education. Currently, there is no department that is actively enforcing this ordinance. The SPD only has one authorized F.T.E. assigned to handle ABC issues for the entire City.

The ABC has an office in Sacramento which covers six (6) northern California counties. Due to such a large area, the burden of enforcement falls primarily on the Police Department. This ordinance would allow us to increase devoted staff for training and enforcement.

In the last five years, a second position has been funded through state grants. However, in fiscal year 04/05, we did not receive funding and this left one officer to cover the entire City. One officer is not able to address most issues alone; undercover operations require a minimum of two officers.

Proposed Programs

The SPD's Alcohol Education and Compliance program would be composed of the following elements aimed at mitigating the negative impacts of alcohol sales on the health and well being of our community.

- Youth Education
- Prevention
- Enforcement
- Training
- Coordination with City Departments, residents, and businesses
- Media and Public Relations

In 2005, staff held informational meetings for stakeholders. All licensed establishments received a letter inviting them to attend one of the meetings. At these meetings staff outlined the current ratio of licenses to people and to officers, problems associated with retail establishments, and most importantly our commitment to work with the licensees and citizens to effectively reduce problems and promote continued success in their business. Staff assured the businesses they would be informed as we progress through this process and a future meeting would be held to discuss the ordinance and their concerns.

In August and September of 2007, staff held six additional meetings for stakeholders. Again, all holders of an ABC license were notified. Issues raised at the meetings were mostly around the amount of the fee and clarifying questions about the program. The Police Department attended several community meetings, educating the community on alcohol related issues and the current status of the ordinance. Additionally, staff

attended meetings with various business associations, Property Business Improvement Districts, and Redevelopment Area Committees.

Attachment 2

**ORDINANCE NO.**

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE AMENDING CERTAIN DEFINITIONS AND ADDING DEFINITIONS TO SECTION 17.16.010 OF TITLE 17 OF THE CITY CODE PERTAINING TO ALCOHOL SALES FACILITIES; AMENDING TABLES 17.24.030A AND 17.24.030B OF SECTION 17.24.030 OF TITLE 17 OF THE CITY CODE; AMENDING FOOTNOTE 40 TO SECTION 17.24.050 OF THE CITY CODE; ADDING CHAPTER 17.86 TO TITLE 17 OF THE CITY CODE TO ESTABLISH REGULATIONS FOR NEW FACILITIES ENGAGED IN SALE OF ALCOHOLIC BEVERAGES; ADDING CHAPTER 17.230 TO TITLE 17 TO ESTABLISH AN ADMINISTRATIVE NUISANCE ABATEMENT PROCESS; AND ADDING CHAPTER 8.10 TO TITLE 8 OF THE SACRAMENTO CITY CODE TO ESTABLISH AN EDUCATION, OUTREACH AND MONITORING PROGRAM FOR BUSINESSES ENGAGED IN THE SALE OF ALCOHOLIC BEVERAGES**

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

**SECTION 1**

Section 17.16.010 of Title 17 of the City Code is amended as follows:

A. The definition of "Bar" is amended to read as follows:

"Bar" means any premises designed, maintained, operated, used or intended to be used for the selling or serving of alcoholic beverages to the public for consumption on the premises and which does not qualify as, or is not part of, a Full Service Restaurant as that term is defined herein.

B. The definition of "Restaurant" is amended to read as follows:

"Restaurant" means an establishment where food and drink are prepared, served, and consumed primarily within the principal building. A restaurant may or may not have within its premises a bar for the sale of alcoholic beverages for on-site consumption. Restaurants fall within one of the following categories as defined herein: "Restaurant Without Alcohol Sales," "Restaurant with Alcohol

Sales: Full Service Restaurant" (also "Full Service Restaurant") or "Restaurant with Alcohol Sales: Other than Full Service."

"Restaurant with Alcohol Sales: Full Service" (also "Full Service Restaurant") means a place that: (1) is primarily, regularly and in a bona fide manner used and kept open for the serving of at least lunch or dinner to guests for compensation; (2) has kitchen facilities containing conveniences, including appliances such as stoves, ovens broilers or other devices, as well as pots, pans, or containers that can be used for cooking, for cooking an assortment of foods that may be required for those meals; 3) has the necessary tableware and related equipment with which to serve meals to the public; (4) obtains at least 35% (35%) of its gross receipts from the sale of meals and other food and non-alcoholic drink products; and (5) submits evidence of total meal and other non-alcoholic product sales to City officials upon request for purposes of determining its status under this code. A place that sells or serves only sandwiches, whether prepared in a kitchen on the premises or made elsewhere and served on the premises or only snack foods, or both, is not a Full Service Restaurant.

"Restaurant with Alcohol Sales: Other than Full Service" means an establishment that serves food and that engages in alcohol sales for on-premises consumption that does not constitute or qualify as a Full Service Restaurant.

"Restaurant without Alcohol Sales" means an establishment that serves food and that does not engage in alcohol sales.

**SECTION 2**

Section 17.24.030 of Title 17 of the City Code is amended as follows:

A. The row in the matrix for "Restaurants" set forth in Table 17.24.030A is deleted, and three rows are added to the matrix set forth in Table 17.24.030A for "Restaurant Without Alcohol Sales," "Restaurant With Alcohol Sales: Full Service" and "Restaurant With Alcohol Sales: Other than Full Service," to read as follows:

TABLE 17.24.030A

| USE | RF | R 1 | R1 A | R1 B | R 2 | R2 A | 52 B | R 3 | R3 A | R 4 | R5 | RMX | R O | OB |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Restaurant w/o Alcohol Sales* | | | | | | | | | | | 7 | 69 | | 64/18 |
| Restaurant w/Alcohol Sales: Full Service* | | | | | | | | | | | 7 | 69 | | 64/18 |
| Restaurant w/Alcohol Sales: Other than Full Service* | | | | | | | | | | | 40 | 40/69 | | 64/18<br>40 |

B. The row in the matrix for "Restaurants" set forth in Table 17.24.030B is deleted, and three rows are added to the matrix set forth in 17.24.030B for "Restaurant Without Alcohol Sales," "Restaurant With Alcohol Sales: Full Service" and "Restaurant With Alcohol Sales: Other than Full Service," to read as follows:

TABLE 17.24.030B

| USE | EC | HC | SC | C1 | C2 | C3 | C4 | M1 | M1 (S) | M 2 | M2 (S) | M I P | MR D | H | SP X | T C | A | AO S | F | A R P-F |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Restaurant w/o Alcohol Sales* | 53 | 16 | 15 | X | X | X | X | X | 20 | X | 20 | 53 | 53 | | 14/ 70 | | | | 5/ 19 | |
| Restaurant w/Alcohol Sales: Full Service* | 53 | 16 | 15 | X | X | X | X | X | 20 | X | 20 | 53 | 53 | | 14/ 70 | | | | 5/ 19 | |
| Restaurant w/Alcohol Sales: Other Than Full Service* | 53/ 40 | 16/ 40 | 15/ 40 | 40 | 40 | 40 | 40 | 40 | 20/ 40 | 40 | 20/ 40 | 53/ 40 | | | 14/ 70 | | | | 19/ 40 | |

**SECTION 3**

Footnote 40 to Section 17.24.050 is amended to read as follows:

40. Alcohol Sales. A special permit issued pursuant to the provisions of Chapter 17.86 shall be required to establish this use in this zone.

**SECTION 4**

Chapter 17.86 is added to Title 17 of the City Code to read as follows:

## 17.86 Alcoholic Beverage Sales

### Article I. General Requirements

**17.86.010 Purpose and Intent.**

This chapter requires and provides criteria for the consideration and approval of special permits before a new alcoholic beverage sales commercial activity will be permitted in any land use zoning district in the City, and also for any significant change in operation or character of existing facilities engaged in sales of alcoholic beverages. The City finds it necessary and in the interest of the public health, safety and welfare to regulate both new and existing facilities that engage in the sale of alcoholic beverages, given

their potential for becoming public nuisances and having a negative impact on the neighborhoods in which they are located.

The general purposes of this chapter are:

A. To protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare by requiring that new alcoholic beverage sale commercial activities obtain and comply with the conditions of a special permit, and by requiring owners and operators of existing alcoholic beverage sale that seek to change the nature, scope or mode of operation to obtain a special permit before doing so.

B. To protect residential, commercial, industrial, and civic areas and minimize the adverse impacts of nonconforming and incompatible uses;

C. To provide opportunities for alcoholic beverage sales commercial activities to operate in a mutually beneficial relationship with each other and with other commercial and civic services;

D. To provide mechanisms to address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels;

E. To prevent alcoholic beverage sales commercial activities from becoming a source of public nuisances in the community; and

F. To provide for properly maintained alcoholic beverage sales commercial activities to minimize impacts to the surrounding environment.

G. To monitor existing uses to ensure that they do not substantially change their mode or character of operation.

**17.86.020 Definitions.**

In addition to the definitions set forth in Chapter 17.16 of this title, the following definitions shall apply for purposes of this chapter.

"Alcoholic beverage sales commercial activity" means the retail sale, for on-premises or off-premises consumption, of alcoholic beverages. The following uses do not constitute alcoholic beverage sales commercial activities: a Restaurant with Alcohol Sales: Full Service, as defined herein; a store greater than fifteen thousand (15,000) square feet where the shelving allocated to alcoholic beverages does not exceed ten percent (10%) of the total shelving within the store.

"Condition of approval" means a requirement that must be carried out by: (1) a new alcoholic beverage sales commercial activity to exercise a special permit; or (2) an

existing alcoholic beverage sales commercial activity that obtains a special permit modification pursuant to this chapter.

"License" means a valid State of California Department of Alcoholic Beverage Control license.

## Article II. New Alcoholic Beverage Sales Commercial Activities

### 17.86.030 Special Permit Required for New Alcoholic Beverage Commercial Sales Activity.

A special permit shall be required to establish a new alcoholic beverage sales commercial activity in any zone where such use is authorized pursuant to Chapter 17.24.

### 17.86.040 Findings Required for Approval of Special Permit and Conditioning Authority.

A. A special permit shall not be approved unless the Planning Commission makes all of the following findings of fact in addition to the findings required under Section 17.212.010:

(1) The proposed use will not adversely affect the peace or general welfare of the surrounding neighborhood;

(2) The proposed use will not result in undue concentration of establishments dispensing alcoholic beverages;

(3) The proposed use will not enlarge or encourage the development of a skid row or blighted area; and

(4) The proposed use will not be contrary to or adversely affect any program of redevelopment or neighborhood conservation.

B. Considerations and Conditions. The Planning Commission shall consider whether the proposed use will detrimentally affect nearby residentially zoned areas, and shall give consideration to the distance of the proposed use from residential buildings and from churches, schools, hospitals, public parks and playgrounds, child care centers, social services, and other similar uses.

In addition to the considerations applicable to all special permit applications, the Planning Commission may consider the following under this section: hours of operation; quantity and size of containers sold; alcoholic content of wines sold for off-premises consumption; percentage of shelf space devoted to alcoholic beverages; a requirement that the establishment post, in compliance with the city code, signs prohibiting the possession of open alcoholic beverage containers or the consumption of alcoholic beverages on any property adjacent to the

establishment under the control of the establishment operator; any other activities proposed for the premises.

C. Council Approved Standard Conditions: The City Council may establish, by resolution, standard conditions of operation that shall apply to all new alcoholic beverage commercial sales activities, or to certain categories of new alcoholic beverage commercial sales activities (e.g., off-premises retail sales, on-premises retail sales). The procedures set forth in Section 17.208.010 for amending the text of the Zoning Code shall be followed when considering and establishing standard conditions of operation pursuant to this section.

## Article III. Full Service Restaurants

### 17.86.050 Full Service Restaurants: Inspections of books and records, failure to operate as Full Service Restaurants.

A. Upon request by City officials, the owner of a restaurant established as a Full Service Restaurant after the effective date of this Chapter shall make available its books and records to allow the City to determine whether the restaurant meets the requirements to qualify as a Full Service Restaurant. City officials may request access to such books and records not more than once every four (4) months. If on two consecutive occasions the review of the books and records shows that a restaurant established as a Full Service Restaurant does not meet the gross revenue requirements to qualify as a Full Service Restaurant, or if the City officials determines that the restaurant fails to satisfy any other requirements of a Full Service Restaurant, the owner and operator, and also the property owner if not the same, shall be given notice pursuant to Subsection C below and shall thereafter comply with the requirements of Subsection C unless an appeal pursuant to Subsection B is successful. The determination of whether a restaurant continues to qualify as a Full Service Restaurant shall be based on the gross revenues for the six months' prior to the month in which the request to inspect the restaurant's books and records is made.

B. An owner of a restaurant, and also the property owner if not the same, dissatisfied with the determination made pursuant to Subsection A above may appeal that determination to the Planning Commission at any time within fifteen (15) days of the date that the notice is mailed. The procedures governing appeals of Zoning Administrator decisions shall apply to appeals under this section, provided that the appeal to the Planning Commission shall be final, and shall not be subject to further appeal to, or call-up by, the City Council.

C. If the City determines that a restaurant established as a Full Service Restaurant no longer qualifies as a Full Service Restaurant, the City shall provide written notice to the owner or operator, and also to the property owner if not the same, and the owner or operator of the restaurant that the restaurant does not qualify

as a Full Service Restaurant and that compliance with Subsection D is required. The notice shall specify the reason(s) that the restaurant does not qualify as a Full Service Restaurant.

D. Following notice pursuant to Subsection C, or in the case of appeal, following notice of denial of the appeal, the owner or operator shall take one or more of the following actions:

1) within thirty (30) days of the date on which the notice pursuant to Subsection C is mailed, or in the case of an appeal, within fifteen (15) days of the date on which notice of denial of the appeal is mailed, file and thereafter pursue in a timely and diligent manner, an application for a special permit to operate a Restaurant with Alcohol Sales: Other than Full Service. The application shall be subject to withdrawal or denial for failure to prosecute in a timely manner pursuant to Chapter 17.196. Pending a decision on the special permit application, the owner or operator may continue to operate and sell alcoholic beverages. If the application for a special permit is granted, the owner or operator shall thereafter comply with the terms and conditions of that special permit. If the application for a special permit is denied, the owner or operator shall cease all alcohol sales activity, and no new use that engages in alcohol sales, including a Full Service Restaurant, shall be established for a period of one year; or

2) Cease selling alcoholic beverages.

## Article IV. Existing Facilities Established Prior to Special Permit Requirement

### 17.86.060 Special Permit Required for Changes in an Existing Activity

A. For any alcoholic beverage sales commercial activity lawfully established prior to the special permit requirement, a special permit shall be required before any of the following are allowed to occur:

(1) The establishment changes its type of license within a license classification; or

(2) The reoperation of an establishment after it has been discontinued for a continuous period of one year, including the case where the license for such operation is suspended or revoked; provided, however, that a suspension for violation of Business and Professions Code Section 23790.5(e) shall not constitute a break in the continuous operation of the establishment. An establishment which has discontinued operation shall not be deemed to have resumed operation unless the establishment reopens for business

and operated, for sixty (60) days, in substantially the same manner that it operated before its operation was discontinued. Whether an establishment is being operated in substantially the same manner shall be determined by reference to the type and amount of merchandise for sale, the hours and days of operation, the number of persons on duty to serve customers, and such other factors as may be relevant; or

(3) There is a substantial change in mode of operation, including, but not limited to: a) increasing the floor space devoted to display or storage of alcoholic beverages; or (b) modifying the premises by expanding the gross floor area more than ten (10) percent, which requires issuance of a building permit (not including routine maintenance and repair).

**17.86.070 Transfer or revocation of alcoholic beverages control licenses.**

A. If a license is to be transferred to a new owner, the Chief of Police or the Code Enforcement Director, or their designees, are authorized under Business and Professions Code Section 23800(e), on behalf of the City, to request that the state of California Department of Alcoholic Beverage Control within thirty days after the filing of a transfer application (or a longer period if allowed by law) impose conditions to mitigate problems at or in the immediate vicinity of the premises on any licenses being transferred to new owners.

B. If a license is to be transferred to a new location, the alcoholic beverage sales commercial activity must apply for a new special permit in accordance with the requirements of this title.

C. If a license is revoked by the State of California Department of Alcohol Beverage Control, after the revocation becomes a final order the alcoholic beverage sales commercial activity must cease operation and may not resume unless the owner or operator applies for and obtains a special permit in accordance with this chapter.

**SECTION 5**

Chapter 17.230 is added to Title 17 to read as follows:

**17.230 Administrative Nuisance Abatement Proceedings**

**17.230.010 Purpose and Intent**

A. **Purpose.** It is the intent of this section to provide procedures for the administrative abatement by the Planning Director, Code Enforcement Director or

Chief of Police, or their designees, of public nuisances and revocations, rescissions or modifications of discretionary zoning approvals. This section also sets forth procedures that allow for the Planning Director, Code Enforcement Director or Chief of Police, or their designees to modify or remove conditions imposed as a result of nuisance abatement proceedings; to enforce conditions imposed as part of any discretionary zoning approval; and to require that the cost of a proceeding instituted pursuant to this section be paid by those responsible for the maintenance and operation of the subject use.

These provisions will allow the City to protect the public peace, health and safety from any land use which becomes a nuisance; adversely affects the health, peace or safety of persons residing or working in the surrounding area; or violates any land use related condition imposed pursuant to this chapter or other provision of law, while protecting the constitutional rights of the parties involved.

**17.230.020 Definitions**

For purposes of this chapter, the following definitions shall apply.

"Alcohol establishment" means alcohol establishment as defined in section 8.10.020.

"Director" means the Planning Director or designee(s), the Code Enforcement Director or designee(s), or the Chief of Police or designee(s).

**17.230.030 Authority to Initiate Administrative Nuisance Abatement Proceedings**

A. **Authority**: Notwithstanding any other provision of this Code to the contrary, the Planning Director and the Code Enforcement Director may initiate an administrative proceeding pursuant to this chapter to seek the modification, discontinuance or revocation of any use or discretionary zoning approval; and the Chief of Police may initiate an administrative proceeding pursuant to this chapter to seek the modification, discontinuance or revocation of any use or discretionary zoning approval where the use is an alcohol establishment as defined herein.

B. **Grounds for Initiating Administrative Proceedings**: A Director may seek the modification, discontinuance or revocation of a use or discretionary zoning approval if the use or discretionary zoning approval is being operated or maintained in a manner that meets one or more of the following:

1. Jeopardizes or adversely affects the public health, peace, or safety of persons residing or working on the premises or in the surrounding area; or

2. Constitutes a public nuisance; or

3. Has resulted in repeated nuisance activities, including, but not limited to, disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises

(especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or police detentions and arrests; or

4. Violates any provision of this chapter, or any other city, state, or federal regulation, ordinance, or statute; or

5. Violates any condition imposed by a prior discretionary land use approval.

**17.230.040 Administrative Hearing Officers and Administrative Hearing Procedures**

A. The City Manager shall appoint one or more neutral administrative hearing officers to conduct administrative proceedings under this chapter. A neutral hearing officer shall be an impartial individual, without a vested interest in either the use or activity that is the subject of the administrative hearing or a complainant against the use or activity, and may not be a current City employee. A contracted administrative hearing officer shall not be considered a City employee for purposes of this Chapter. As an alternative to appointing administrative hearing officers, the City Manager may enter into an agreement with the State Office of Administrative Hearings to use administrative law judges assigned to that office to conduct hearings pursuant to this chapter.

B. The City Manager shall prepare, subject to Council approval, rules and procedures to establish a pool of qualified persons who are capable of acting on behalf of the City as administrative hearing officers.

**Section 17.230.050 Notice, Hearings and Appeals.**

A. A Director may initiate an administrative proceeding before an administrative hearing officer by requesting that the City Manager or designee appoint an administrative hearing officer to conduct a proceeding under this chapter to determine whether a use or activity is being operated or maintained in a manner that meets one or more of the criteria specified in Section 17.230.010; and if so, whether the use or activity should be modified or discontinued or a discretionary zoning approval revoked. Within a reasonable period of time, the City Manager shall refer the matter to an administrative hearing officer to conduct the administrative proceeding.

B. The administrative hearing officer shall conduct the hearing in a manner generally consistent with the rules governing administrative hearings before the City Council, as set forth in the Council Rules and Procedures adopted and amended by resolution of the Council from time to time. The administrative hearing officer may take into consideration oral testimony, written submissions of the parties and other forms of documentary information. The administrative hearing officer is not bound by the formal rules of evidence governing court proceedings. The administrative hearing officer may provide for sworn testimony, cross-examination or other procedural adjustments as he or she determines is appropriate.

C. The Director initiating the proceeding under this chapter shall obtain from the assigned administrative hearing officer a date for the administrative hearing under this chapter and thereafter provide notice pursuant to this section.

1. **Notice**. A written notice shall be mailed not less than fifteen (15) calendar days prior to the date of hearing to the owner and operator of the use or activity that is the subject of the administrative proceeding, and to the property owner, if not the same, and to the owners of all property within and outside of the City that is within 500 feet of the exterior boundaries of the property involved, using for the purpose of notification the last known name and address of the owners, as shown in the City Clerk's records or in the records of the County Assessor. If all property within the 500-foot radius is under the same ownership as the property involved in the proceeding, then the owners of all property which adjoins that ownership shall be included in this notification. Written notice shall also be mailed to residential, commercial and industrial occupants of the property involved, and all property within 500 feet of the exterior boundaries of the property involved. This requirement can be met by mailing the notice to "occupant." If this notice provision will result in notice being given to less than 20 different owners of at least 20 different lots other than the subject property, then the 500-foot radius for notification shall be increased in increments of 50 feet until the required number of persons and lots are encompassed within the expanded area. Notification shall then be given to all property owners and occupants within the expanded area.

2. **Content of Notice**. The notice shall set forth the date, time, place and location of the administrative hearing. The notice shall also provide a brief statement of the reason(s) for the hearing, including a designation of the grounds under Section 17.230.030B that are the basis for the request for modification, revocation or discontinuance. Where modifications or conditions are sought, the notice shall indicate the requested modifications or conditions.

3. **Hearing and Decision**.

   a. After the conclusion of a public hearing, the administrative hearing officer may require the modification, discontinuance or revocation of the use or discretionary zoning approval, as the case may be. As part of the action, the administrative hearing officer may impose conditions as he or she deems appropriate, including those necessary to protect the best interests of the surrounding property or neighborhood; to eliminate, lessen, or prevent any detrimental effect on the surrounding property or neighborhood; or to assure compliance with other applicable provisions of law or conditions of an earlier discretionary approval.

b. The administrative hearing officer shall also have the authority to impose a condition directing the payment of fees established pursuant to Section 17.230.070 to cover the City's costs in processing the matter. The condition shall further provide that if the decision is not appealed, then the amount shall be paid in full to the City of Sacramento with confirmation of the payment being provided to the Director within 30 days of the decision date. If an appeal is filed and the decision of the hearing officer is upheld on appeal, then the fee shall be paid in full with confirmation made to the Director within 30 days of the effective date of the decision. If the decision is reversed on appeal, then no payment of fees other than the appeal fee specified in Section 17.230.070 shall be required.

4. **Findings:** Any determination shall be supported by written findings. The written determination shall also state that failure to comply with any or all conditions imposed may result in the issuance of an order directing the discontinuance or revocation of the use or discretionary zoning approval. However, a use may be ordered discontinued or a discretionary zoning approval revoked only after an administrative hearing is held pursuant to this chapter, and only if it is determined that:

(a) prior governmental efforts to cause the owner or operator to eliminate the problems associated with the use or discretionary zoning approval have failed (examples include, but are not limited to, formal action, such as citations, orders or hearings by the Police Department, the Planning Director, the Zoning Administrator or City Planning Commission, or any other governmental agency); and

(b) that the owner or operator has failed to demonstrate, to the satisfaction of the administrative hearing officer, the willingness or ability to eliminate the problems associated with the use or discretionary zoning approval.

5. **Appeal**: Within ten (10) calendar days after a decision by the administrative hearing officer under this chapter, the business owner or operator, or property owner if not the same, may appeal that decision to the Planning Commission. Upon receipt of the appeal and the required appeal fee, the clerk of the Planning Commission will set the date for consideration of the appeal.

The appeal of the decision of an administrative hearing officer shall be heard in the same manner as an appeal of a Zoning Administrator's decision. The decision of the Planning Commission

on an appeal of the decision of an administrative hearing officer shall be final, except as provided below.

**Exception**: A decision of the Planning Commission ordering the discontinuance of a use or the revocation of a discretionary zoning approval shall be subject to appeal to the City Council. The appeal shall be filed within ten (10) calendar days after the date of the Planning Commission decision, and the appeal shall be noticed and heard in the manner specified in Section 17.200.050. The appeal before the City Council shall be heard in the same manner as an appeal of a Planning Commission decision on a special permit. An appeal fee shall be charged pursuant to Section 17.230.070.

6. **Violations**. It shall be unlawful to violate or fail to comply with any requirement or condition imposed pursuant to this section. Violation or failure to comply shall constitute a violation of this chapter and shall be subject to the same penalties as any other violation of this chapter. In the event of a violation of an order of discontinuance or revocation, the Building Department is authorized to revoke the certificate of occupancy of the property in violation.

**17.230.060 Modification of Administrative Decisions.**

A. Any administrative nuisance abatement decision made pursuant to this chapter, any conditions imposed by that decision, or any decisions on a discretionary zoning approval pursuant to this section may be modified pursuant to the provisions of this subsection. Upon application by the owner or lessee to the Director that initiated the administrative proceedings that resulted in the imposition of conditions or the decision on the discretionary entitlement, the Director may modify or eliminate the conditions of a prior decision. An application shall be made on official forms provided by the Department of Planning and shall be accompanied by a filing fee established pursuant to Section 17.230.070.

B. An application shall be considered if a time period of at least one year has passed from the date the conditions were originally imposed; or if there have been substantial changes in the nature and operation of the use or discretionary zoning approval; or if there has been a change in circumstances such that the continued enforcement of the previously imposed conditions is no longer reasonable or necessary.

C. The Director shall hold a hearing on the application. Notice of the hearing shall be given in the same manner specified in Section 17.230.050.

D. The Director may grant or deny the requested application, or modify the prior decision, including imposing new or different substitute conditions as the Director deems appropriate. No modification shall be approved pursuant to this subsection unless the Director finds each of the following:

1. That the requirements for consideration of the application under this subsection have been met;

2. That due consideration has been given to the effects of the modification on surrounding properties;

E. **Appeal**: An appeal from the decision of the Director may be taken to the Planning Commission in the same manner as an appeal of a decision of an administrative hearing officer pursuant to Section 17.230.050.

F. **Successive applications**: Subsequent applications for modification may be filed in accordance with this subsection. If a request for modification is denied with prejudice, a subsequent application shall not be filed within one year from the date of the decision denying the request for modification.

**17.230.070 Fees**

The Council, by resolution, shall establish fees to fund the costs incurred by the City for notice, hearing, appeal and other activities under this chapter.

**SECTION 6**

Chapter 8.10 is added to Title 8 of the Sacramento City Code to read as follows:

**Chapter 8.10 Education, Outreach and Monitoring Program for Alcohol Establishments**

**8.10.010 Purpose and Intent**

This chapter provides the City with a process to work with the community and alcohol establishments to address public nuisance and land use problems associated with the sale of alcoholic beverages. The purpose of this chapter is to promote the public health, safety and general welfare by implementing an education, outreach and monitoring program directed at all alcohol establishments in order to reduce nuisance activities and benefit the local community.

**8.10.020 Definitions**

"Alcoholic beverage" means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

"Alcohol establishment" means a business with a temporary or permanent license from the State of California Department of Alcoholic Beverage Control and is engaged in the sale of alcoholic beverages to the general public.

"Sale of alcoholic beverages" means the retail sale, for on-premises or off-premises consumption, of alcoholic beverages.

**8.10.030 Education and Outreach to Alcohol Establishment**

A. Within six months of the enactment of this chapter, the Police Chief or his or her designees, shall develop and implement an education and outreach program to educate new and existing alcohol establishments about the steps the establishment may take to operate as a good neighbor in their neighborhood and to avoid nuisance behaviors and activities. This education and outreach program shall be based upon a public health/environmental approach to the prevention of alcohol-related nuisances. The education and outreach program shall be directed to all alcohol establishments, relevant business associations, and residential and commercial property owners and tenants within one block of an alcohol establishment.

B. The education and outreach program shall include:

(1) The development and distribution of information packets on the requirements and benefits of this chapter and other educational materials, including, but not limited to, culturally and linguistically appropriate informational posters, brochures and other materials for display at the alcohol establishment.

(2) Commencing within six months of the effective date of this chapter, the Police Department shall provide educational sessions for owners and/or operators of alcohol establishments at multiple locations throughout the City on a regular basis. The Police Department shall seek to provide an educational visit to those establishments whose owners and/or operators do not attend at least one educational session every two years.

(3) Coordination of community stakeholder meetings, which should include representatives from the Police Department, Code Enforcement Department, other City departments as appropriate, alcohol establishments, business associations, neighborhood associations and community organizations.

C. The Police Department may promulgate additional education, outreach and administrative requirements for alcohol establishments as are necessary to ensure successful implementation of this chapter.

**8.10.040 Regulatory Fees**

A. The following regulatory fees are established and imposed to fund the cost of administering the Education, Outreach and Monitoring Program.

(1) Inspection and Administration Fee

An inspection fee is established and shall be charged annually to all alcohol establishments in the City of Sacramento. The purpose of the fee is to fund the administrative and staffing costs necessary to conduct an inspection of each alcohol establishment facility on a regular, periodic basis to ensure compliance with the requirements of Title 17 and any other applicable conditions of operations.

(2) Education and Outreach Fee

An education and outreach fee is established and shall be charged annually to all alcohol establishments in the City of Sacramento. The purpose of the fee is to fund the costs of development, implementation and administration of the education and outreach program established pursuant to this chapter.

B. The City Council, by resolution, shall establish the initial and subsequent amounts of the foregoing fees. The City Council shall hold at least one public hearing on the fees prior to adoption.

C. A new alcohol establishment or an alcohol establishment that undergoes a change in ownership after the enactment of this chapter shall pay its first annual fee within sixty (60) days of commencing operation or of the change in ownership.

**8.10.050 Payment of Fees and Penalties for Late Payment**

Section 8.10.050 Payment of Fees and Penalties for Late Payment

A. Payment of the regulatory fees specified in Section 8.10.040 shall be made within sixty (60) days following the date of renewal of the ABC license for an alcohol establishment.

B. Delinquent payment and penalties

1. Original Delinquency. Any operator who fails to remit any fee imposed by this chapter within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the fee.

2. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the fee in addition to the amount of the tax and the ten (10) percent penalty first imposed.

**SECTION 7**

Section 17.212.080 of Title 17 of the City Code is amended to read as follows:

**17.212.080 Modification or Revocation of a Special Permit**

A special permit issued by the zoning administrator or planning commission may be revoked or modified in lieu of revocation only under the following circumstances:

A. Planning Director May Set Hearing on Revocation of Special Permit. When in the discretion of the planning director a use permitted by a zoning administrator's special permit or special permit is being conducted in a manner detrimental to the public health, safety or general welfare, or in such a manner as to constitute a public nuisance, or in violation of any condition imposed by the zoning administrator or planning commission on the use, or if conditions specified in the permit as limiting the duration of the permit have occurred (other than the passage of time as provided in Section 17.212.050 of this chapter), the planning director shall set a hearing before the zoning administrator or planning commission to consider revocation or modification of the special permit. Notice of such hearing shall be given in the manner prescribed by Section 17.212.040(C)(1) and (2) of this chapter for a zoning administrators special permit or Section 17.212.030(A)(1) and (2) of this chapter for a special permit. In addition, notice shall be given to the owner of the property upon which the use is conducted, and to the person in possession of said property if other than the owner, which shall include a specific statement of the conditions which are deemed to constitute a detriment to the public health, safety or welfare, or which constitutes a public nuisance, or which are in violation of imposed conditions.

   Exception: Special Permits for Uses Engaged in Alcohol Sales: In addition to the Planning Director, the Chief of Police and the Code Enforcement Director, or their designees, shall have the authority to initiate revocation or modification proceedings where the use subject to the special permit is engaged in the sale of alcoholic beverages.

B. Zoning Administrator or Planning Commission May Revoke or Modify Special Permit. Upon a determination by the zoning administrator or planning commission that the use is being conducted in a manner detrimental to the public health, safety or welfare, or in a manner so as to constitute a public nuisance, or in violation of any imposed condition the zoning administrator or planning commission may revoke the special permit. If the zoning administrator or planning commission determines that the detrimental aspects of the use which exist may be alleviated through a modification to the special permit, it may make such modification in lieu of revocation, including, but not limited to, imposition of conditions which must be complied with if the use is to continue.

C. Appeal. In the case of a revocation or modification of a special permit or a zoning administrator's special permit, an appeal may be taken in accordance with

Chapter 17.200 of this title within ten (10) days after the decision of the zoning administrator or planning commission to revoke or modify said permit.

**SECTION 8**

Section 17.212.090 of Title 17 of the Sacramento City Code is repealed.