REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
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STAFF REPORT
June 27, 2006

Honorable Mayor and
Members of the City Council

Subject: Ordinance: Amendments and Additions to the Sacramento City Code Relating to Consumption and Possession of Alcoholic Beverages

Location/Council District: Citywide

Recommendation:

The Law & Legislation Committee and staff recommend that the City Council adopt the attached ordinance amending Title 9 of the Sacramento City Code relating to the consumption and possession of alcoholic beverages.

Contact: Sylvia Moir, Lieutenant, 433-0728

Presenters: Sylvia Moir, Lieutenant

Department: Police

Division: Metro

Organization No: 2123

Summary:

The City Code currently prohibits the consumption of alcoholic beverages in limited public areas. The City Code does not currently prohibit possession of open alcoholic beverages upon public properties.

Staff proposes that the City amend the current City Code to prohibit consumption of alcoholic beverages on private property open to the public or public view. Additionally, the proposed amendments would prohibit the possession of alcoholic beverages on public property. Staff has conducted research into similar ordinances from other cities, and the proposed changes concur with other cities' ordinances.

Committee/Commission Action:

On November 16, 2004, the Law and Legislation Committee unanimously approved the proposed amendments. The Committee directed staff to draft the amendments accordingly and to return directly to the entire City Council for final approval.

Background Information:

The consumption and possession of alcoholic beverages on public property and in public areas adversely impacts neighborhoods, commercial area and the general welfare of the City. Public consumption of alcohol is normally associated with other illegal activities, such as: loitering, public intoxication, fights, and noise problems. It is the City's intent to promote the use and enjoyment of public property and public places while balancing special events where alcoholic beverages may be permitted with appropriate conditions and regulations in place.

Currently, Sacramento City Code 9.04.050 states, in part, that, *"It is unlawful for any person to consume beer, wine or any intoxicating liquor on any street, sidewalk, alley, highway or public court."* The code does not prohibit consumption on private property open to the public or on City property, which includes City parking lots. The result is a very narrow application that prevents inefficient enforcement of public consumption of alcohol. Additionally, it only pertains to the consumption of alcoholic beverages. There is no existing provision prohibiting the *possession* of an open container upon public properties.

Business and Professions Code section 25620 (B&P § 25620) makes it a violation to possess any open alcoholic beverage in any City park or public place if the City has enacted an ordinance that prohibits such actions. Enactment of the proposed amendments would enable the City to enforce the powers allocated in B&P § 25620. Numerous other cities and counties in California have enacted similar ordinances, such as: Sacramento County, Vacaville, Palm Springs, Fresno, Davis, and Santa Cruz.

By amending City Code 9.04.050, public consumption would be prohibited on all private property open to the public or on any private drive, stairway, doorway or other private property open to the public view without the express permission of the owner. Furthermore, the addition of City Code 9.04.055 would prohibit the possession of open containers containing alcoholic beverages on all public property, unless specified exceptions apply.

Financial Considerations:

There are no financial considerations associated with this report.

Environmental Considerations: Not applicable

Policy Considerations:

The recommendations in this report are consistent with Sacramento City Code, Title 3. Also, the proposed amendments are aligned with the City's Strategic Plan goal to improve and expand public safety.

Emerging Small Business Development (ESBD): Not applicable

Respectfully Submitted by: _____
Sylvia Moir, Lieutenant

Approved by: _____
Albert Nájera
Chief of Police

Recommendation Approved:

_____
for RAY KERRIDGE
City Manager

Ref: COP 6-10

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ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 9.04.050 OF TITLE 9 OF THE CITY CODE PERTAINING TO CONSUMPTION OF ALCOHOLIC BEVERAGES IN PUBLIC AND ADDING SECTION 9.04.055 TO CHAPTER 9.04 OF THE CITY CODE TO PROHIBIT POSSESSION OF OPEN CONTAINERS OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO

SECTION 1

Section 9.04.050 of Title 9 of the City Code is amended as follows:

a. Subsection B of Section 9.04.050 is amended to read as follows:

B. It is unlawful for any person to consume beer, wine, or any intoxicating liquor:

1. Upon any property used, or intended to be used as an accessory use, for the parking of motor vehicles by the patrons of any commercial establishment authorized by the state of California to sell alcoholic beverages; or

2. Upon any unimproved property which adjoins such commercial establishment not used for the parking of motor vehicles, which is owned, operated or possessed by the owner, lessee or agent of such commercial establishment; or

3. Upon private property open to the public, including but not limited to parking lots and shopping centers except where expressly permitted pursuant to the terms of a license issued by the ABC; or

4. Upon a private drive, stairway, doorway or other private property open to public view without the express permission of the owner, the owner's agent or the person lawfully in possession of the private property.

b. Except as Subsection B is amended above, the provisions of Section 9.04.050 shall remain unchanged and in full force and effect.

SECTION 2

Section 9.04.055 is added to Title 9 of the City Code of the City of Sacramento to read as follows:

Section 9.04.055 Possession of Open Containers of Alcoholic Beverages in Public Places

A. Purpose

Public property and public places within the City should be readily accessible and available to residents and the public at large. The consumption of alcoholic beverages in these areas can constitute a public health and safety hazard that adversely impacts neighborhoods, commercial areas and the general welfare of the City. It is the City's intent to promote the use and enjoyment of public property and public places while balancing special events where alcoholic beverages may be permitted with appropriate conditions and regulations in place.

B. Definitions

As used in this section:

"Alcoholic beverage" means any alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer, and that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed or combined with other substances, as set forth in Business and Professions Code Section 23004, as may be hereafter amended.

"ABC" means the Alcoholic Beverage Control Board of the State of California.

"Open container" means any bottle, can, jug, box or other receptacle that is open or has been opened and contains any alcoholic beverage.

"City facilities" means structures, buildings or parks owned or controlled by the City of Sacramento.

"Public property" means any property owned or controlled by the City of Sacramento, including but not limited to a street, sidewalk, bike path, alley, parking lot or public park.

C. Possession of open containers on public property prohibited

It is unlawful for any person to possess an open container on public property except as provided herein. This section is enacted pursuant to Section 25620 of the California Business and Professions Code.

D. Exceptions

1. This section shall not prohibit the possession of an open container, at

sidewalk tables adjacent to the premises, of alcoholic beverages purchased on the premises by the customer of a bona fide eating place, as the term is defined in California Business and Professions Code Section 23038, if the bona fide eating place has obtained a revocable encroachment permit from the City authorizing the placement of sidewalk tables and a license from the ABC that permits the sidewalk consumption.

2. This section shall not apply when the possession of an open container of alcoholic beverage is within a structure or designated area located in a park or other public space or area for which, an alcohol license has been issued by the ABC.

3. This section shall not apply to city facilities during the course of approved city events where the consumption of alcoholic beverages has been specifically permitted.

4. This section shall not apply on public property when the City has issued a permit for temporary use and occupancy of public property and the permit provides that alcoholic beverages will be sold or consumed as a part of the function for which the permit is issued.

E. Penalty

Unless another penalty is specified in state law, any person violating this section shall be guilty of an infraction.

F. Preemption by state law

This section shall not be construed or interpreted as applicable to any act or acts regulated by state law, but shall be limited to; permitted subjects of local regulation not preempted by state law.