# REPORT TO COUNCIL
# City of Sacramento

**22**

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

**Consent**
**August 29, 2006**

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

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

**Location/Council District:** Citywide

**Recommendation:** 1) Review the **Ordinance** amending and adding to Title 9 of the Sacramento City Code (SCC) related to the possession and consumption of alcoholic beverages; 2) pass for publication of the **Ordinance** title as required by Sacramento City Charter section 32(c); and 3) continue to September 5, 2006, for final adoption.

**Contact:** Sylvia Moir, Lieutenant, (916) 433-0728

**Presenters:** Not applicable

**Department:** Police

**Division:** Metro

**Organization No:** 2123

**Description/Analysis**

**Issue:** The City currently has an ordinance prohibiting the consumption of alcoholic beverages in limited public areas. However, the City does not have an ordinance prohibiting the possession of open alcoholic beverages upon public properties.

Staff proposes that the City amend the current ordinance to prohibit consumption of alcoholic beverages on private property open to the public or public view. Additionally, the proposed ordinance 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.

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

**Environmental Considerations:** This activity is not subject to the California Environmental Quality Act (CEQA) because it does not constitute a "project" as defined in section 15378 of the CEQA Guidelines, and is otherwise exempt pursuant to Sections 15321(b) (law enforcement activities) and 15601(b)(3) (no significant effect on the environment) of the CEQA Guidelines.

**Rationale for Recommendation:** By amending City Code 9.04.50, 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 SCC 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.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased as a result of this agreement.

Respectfully Submitted by: A/LT. [signature] 3088
Sylvia Moir, Lieutenant

Approved by: [signature]
Albert Nájera, Chief of Police

Recommendation Approved:

[signature]
for Ray Kerridge
City Manager

Ref: COP 8-18

**Table of Contents:**


| | | |
|---|---|---|
| | Report | pg. 1-2 |
| **Attachments** | | |
| **1** | Background | pg. 3 |
| **2** | Ordinance | pg. 4-6 |

**Attachment 1**

## Background

The consumption and possession of alcoholic beverages on public property and in public areas adversely impacts neighborhoods, commercial areas, 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, SCC 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 current code does not allow for prohibition of 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 efficient enforcement of public consumption of alcohol. Additionally, this ordinance only pertains to the consumption of alcoholic beverages. There is no existing ordinance that prohibits 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. By enacting the proposed ordinance, the City will have the authority to enforce the powers allocated in B&P § 25620. Numerous other cities and counties in California have enacted similar ordinances, including the following: Sacramento County, Vacaville, Palm Springs, Fresno, Davis, and Santa Cruz.

On November 16, 2004, the Law and Legislation Committee directed staff to draft amendments and bring these changes to the ordinance to the City Council for approval.

On June 20, 2006, the City Council delayed the final adoption of the ordinance amendments for 60 days in order to ensure modifications adequately allow for common exceptions, such as neighborhood block parties. Staff has examined Council's request and has determined the current permit processes do not conflict with the proposed ordinance amendments. The proposed Section A of SCC 9.04.050 and Section D of SCC 9.04.055 specifically allow for alcohol possession and consumption "...on public property when the City has issued a permit for temporary use and occupancy and the permit provides that alcoholic beverages will be sold or consumed...."

**Attachment 2**

# 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 A of Section 9.04.050 is amended to read as follows:

A. It is unlawful for any person to consume beer, wine, or any intoxicating liquor on any street, sidewalk, alley, highway or public court except where expressly permitted pursuant to the terms of a permit issued by the City for temporary use and occupancy of such public property.

b. 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.

c. Except as Subsections A and B are 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 beverages 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.