



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
April 3, 2018

To: Honorable Mayor and Members of the City Council
 From: Councilmember Harrison and Councilmember Maio
 Subject: Referral to the Health Commission to Consider a “Deemed Approved Ordinance”

RECOMMENDATION

Refer to the Health Commission to consider a Concurrent Sales of Gasoline and Alcoholic Beverages Law regulating the concurrent sales of gasoline and alcoholic beverages. Deem such establishments approved, subject to their adherence to certain standards of behavior.

FISCAL IMPACTS OF RECOMMENDATION

Minimal staff time. Walnut Creek, whose ordinance serves as a model, estimates only a handful of instances of the ordinance resulting in action from code enforcement or City staff. Moreover, we estimate a reduction in Police enforcement time as a result of the intended effects of the proposed ordinance.

CURRENT SITUATION AND ITS EFFECTS

Alcopops—alcoholic beverages with high-alcohol content mixed with sugar and marketed with colorful packaging—inevitably lead to binge drinking. Their large portions (often between 16 and 24 ounces) and high alcohol percentages (occasionally, up to 14% ABV) elevate blood alcohol content to high levels over short intervals of time. Moreover, alcohol companies explicitly market their products at young teenagers. Due to their sweet flavors and enticing marketing, 50% of youth between the ages of 13-20 report drinking alcopops, despite their relatively small market share.

Fundamentally, these products are harmful and dangerous, and the City ought to find solutions to curb their usage.

This item proposes one solution to regulating the problematic behavior of a handful of stores in the City. The suggested ordinance to the Commission would apply only to a handful of off-site establishments, as only off-site establishments are involved in the sale of alcopops and other sugary, high-alcohol content beverages.

To regulate the growth of this corrosive industry, this item proposes the establishment of a modified version of a “Deemed Approved Ordinance.” The Deemed Approved Ordinance is a policy concept that emerged in the early 1990s as the Oakland City

Council pondered the ways it could utilize its local control to cope with their "chronic problem outlets." For the large majority of alcoholic beverage establishments without conditional use permits, the City proposed to "deem" these outlets "approved," provided they meet the conditions described in a piece of legislation passed, eventually, in the late 1990s, following a challenge in the California Court of Appeals.

These conditions were described as "basic non-nuisance" deterrents, including (but not limited to) "no littering, loitering, graffiti, drug dealing, prostitution, gambling, shootings." If a store were to be found in violation of these standards, they could potentially lose their land use permit.

Over the last two decades, dozens of California cities have iterated upon and adopted a Deemed Approved Ordinance. This proposal borrows language from the Deemed Approved Ordinance in Ventura, a city west of Los Angeles. Their model introduced more elaborate operational standards, such as prohibiting establishments from selling beer or malt beverage products in bottles or cans greater than 32 ounces in volume.

The proposed language also borrows language from Walnut Creek, who authored a Concurrent Sales of Gasoline and Alcoholic Beverages law in the early 1990s. By restricting the aim of this modified "Deemed Approved" to establishments concurrently selling motor vehicle fuel and alcoholic beverages, it allows the City to evaluate the model on a smaller scale before expanding to a larger scope.

The "Deemed Approved Ordinance" represents just one regulatory suggestion for the Health Commission to consider. Philosophically, this item intends for the Health Commission to explore solutions to this ongoing City issue.

ENVIRONMENTAL SUSTAINABILITY

No adverse effects to the environment.

CONTACT PERSON

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Attachments:

1: Proposed language

Purpose.

The purpose of this article is to implement the provisions of Business and Professions Code §23790.5 and to protect the public health, safety and welfare by ensuring that the concurrent sales of gasoline and alcoholic beverages does not occur in circumstances which create adverse effects on the area of the proposed sales or the area surrounding the location of the proposed sales, or on persons within such area.

In considering a permit for such use, the Zoning Adjustment Board's review may include the following:

- A. The proximity to and possible detrimental effects on nearby churches, schools, parks, hospitals, playgrounds, youth facilities, residences, and other similar uses.
- B. Public loitering, nuisance, conduct of illegal activities on and outside the premises or other crime or law enforcement problems.
- C. Security arrangements.
- D. Physical configuration of the site, including size, setbacks, site coverage, fencing and visual screening, landscaping, maintenance, architecture and design.
- E. The sale of beer or malt beverage products in bottles or cans greater than 16 ounces in volume and 7% ABV, provided that this standard is not intended to restrict the sale of alcoholic beverages in kegs or other kinds of refillable transport containers, such as growlers (64-ounce glass jugs sealed to transport beer for off-site consumption).

Conditional Use Permit Required.

When otherwise designated as permitted uses by the provisions of this article, the concurrent sales of gasoline and alcoholic beverages shall require a conditional use permit pursuant to BMC 23B.32.

