



OFFICE OF THE CITY ATTORNEY
Long Beach, California

H-1

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City Attorney

April 21, 2015

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HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to receive supporting documentation into the record, conclude the hearing, declare ordinance imposing a moratorium prohibiting the exemption of certain alcohol related uses from the requirement of obtaining a Conditional Use Permit (CUP) before commencing operations adopted as read, and laid over to the next regular meeting of the City Council for final reading; declaring the urgency thereof; and declaring this ordinance shall take effect immediately. (Citywide)

DISCUSSION

On March 17, 2015, the City Council adopted a minute order pursuant to an agenda request which initiated a moratorium that would prohibit the issuance of Conditional Use Permit Exemptions (CUPEX) for certain retail alcohol sales activities in the City. If the attached Ordinance is adopted, no new CUPEX applications will be considered or granted during the moratorium period. As directed by the Council on March 17th, the moratorium would not apply to restaurants that only serve alcohol with meals (without a "stand alone" bar), or to grocery stores. The moratorium was initiated pursuant to the provisions of Chapter 21.50 of the Municipal Code, "Interim Prohibition of Uses."

The Ordinance which has been prepared for Council's consideration establishes a one hundred twenty (120) day moratorium period. During this time, the Development Services Department and the Planning Commission will undertake a study on the propriety of amending the City's zoning and/or business regulations related to the above described uses. If adopted, the 120 day moratorium ordinance (which may be extended upon the direction of the Council), will apply to any development or business license application received by the City after March 17, 2015.

SUGGESTED ACTION:

Approve recommendation.

CHARLES PARKIN, City Attorney

By

MICHAEL J. MAIS
Assistant City Attorney

MJM:kjm
Attach.
A15-00388

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH IMPOSING A MORATORIUM
RELATING TO THE CITY'S CURRENT ZONING CODE
PROVISIONS THAT EXEMPT CERTAIN ALCOHOL
RELATED SALES USES FROM THE REQUIREMENT TO
OBTAIN A CONDITIONAL USE PERMIT (CUP) BEFORE
COMMENCING OPERATIONS; DECLARING THE
URGENCY THEREOF AND DECLARING THAT THIS
ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

WHEREAS, the City's Zoning Code (Long Beach Municipal Code, Title 21
"Zoning") currently requires that many alcohol related sales uses obtain a Conditional
Use Permit (CUP) before commencement of operations. For example, in all commercial
zones of the City, a CUP is required for both "off premises" and "on premises" sale of
alcohol, if it is to take place within five hundred (500) feet of a zoning district allowing
residential uses;

WHEREAS, the City's Zoning Code also contains several provisions that
currently "exempt" certain alcohol related sales uses from the requirement to obtain a
CUP (See Zoning Code Tables 32-1 and 32-1A). The Zoning Code specifically exempts
the following uses from the requirement to obtain a CUP: (1) grocery stores of twenty
thousand (20,000) square feet or greater; (2) a department store or florist with accessory
sales of alcohol; (3) uses located more than five hundred (500) feet from residential uses;
and (4) existing legal nonconforming uses. The Zoning Code gives no explanation as to
why the above referenced uses are not required to go through a public vetting process
prior to commencing the sale of alcohol, and the Zoning Code currently does not
distinguish between the sale of beer and wine and distilled spirits (i.e., "hard liquor").

1 WHEREAS, given the potential negative social and community impacts of
2 alcohol sales in the City, and the nuisance related social and economic harms that can
3 arise if alcohol sales are not properly regulated and vetted, it is appropriate for the City to
4 re-evaluate its present Zoning Code practice of providing ministerial exemptions from the
5 requirement to obtain a CUP prior to commencing alcohol sales in certain instances.

6 WHEREAS, the current Zoning Code exemption provisions have not been
7 examined as to their propriety in many years. Given the potential for urban decay and
8 blight if alcohol sales are allowed to proliferate unchecked, it is appropriate that the
9 Planning Commission and Planning Staff undertake a study of this issue to provide the
10 City Council with a recommendation as to whether or not the City's current Code
11 provisions represent the "best practices" in this critical area of regulation.

12 WHEREAS, the purpose of the interim ordinance is to pause the permit
13 issuance system pending appropriate study and recommendations for those alcohol
14 related uses that are now currently exempted from the requirement to obtain a
15 Conditional Use Permit (CUP) before commencing operations.

16 WHEREAS, a moratorium temporarily prohibiting the exemption of certain
17 alcohol related sales uses from the requirement of obtaining a Conditional Use Permit
18 (CUP) before commencing operations is needed in order to undertake a study pursuant
19 to Long Beach Municipal Code, Chapter 21.50, to determine whether or not the City's
20 current zoning regulations related to alcohol related CUP exemptions are appropriate or
21 need further review or modification.

22 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
23 follows:

24 Section 1. Purpose and Findings. At the direction of the City Council at
25 its duly noticed meetings of March 10th and 17th, 2015, the Planning Bureau of the
26 Department of Development Services and the Planning Commission will conduct an
27 evaluation and study to determine whether or not the City's current zoning regulations
28 related to alcohol sales CUP exemptions are appropriate or need further review or

1 modification.

2 The City Council specifically finds that the existing regulations contained in
3 the zoning and business regulations of the City may be in conflict with the zoning and/or
4 business regulations that are, or will be, studied by the Development Services
5 Department and the Planning Commission pursuant to the City Council's direction. The
6 City Council further finds that this interim ordinance does not, and shall not, conflict with
7 the applicable provisions of the California Coastal Act.

8 Section 2. Estimated Time for Completion of Study. It is estimated that
9 the study or studies undertaken in connection with the adoption of this interim ordinance
10 shall take the various involved Departments and the Planning Commission approximately
11 one hundred and twenty (120) days to complete. For the purposes of this ordinance, this
12 interim moratorium study period shall expire no later than August 19, 2015, or at such
13 time as the City Council does adopt appropriate zoning or business license regulations
14 related to all or some of the above mentioned alcohol related sales businesses,
15 whichever is sooner.

16 Section 3. Prohibition. During the one hundred and twenty (120) day
17 interim moratorium period, no application shall be approved or processed for an
18 exemption from the CUP requirement as said exemptions are described in the "Footnote"
19 and "Notes" section of Table 32-1 and 32-1A of Title 21 of the City's Zoning Code. Said
20 prohibition shall apply Citywide for the duration of the interim moratorium period as
21 described above.

22 Section 4. Exception. This interim moratorium ordinance is not intended to,
23 and shall not apply to: (1) Restaurants serving alcoholic beverages with meals only,
24 provided that the restaurant does not have a fixed bar which provides customer service at
25 said fixed bar; (2) Grocery Stores, which for the purpose of this ordinance shall be
26 defined as a retail sales establishment having as its principal line of business the sale of
27 food and food products, and related items to the customer, which food products are
28 primarily intended for off-premise consumption, where other household supplies or other

1 products are secondary to the primary purpose of food sales.

2 Section 5. The City Council finds and determines that the proposed
3 interim ordinance is not in conflict with the various provisions of the California Coastal Act
4 because, among other things, the proposed interim ordinance does not in any way affect
5 access to or the enjoyment of coastal related activities.

6 Section 6. Declaration of Urgency. This ordinance is an emergency
7 ordinance within the meaning of Long Beach City Charter section 211, and it is urgently
8 required for the long term preservation of the public peace, health and welfare of the
9 citizens of Long Beach for the reason that, pending completion of the necessary planning
10 study and recommendation , it is critical that no new alcohol related CUP exemptions are
11 issued, except as set forth above, in order to prevent the potential proliferation of
12 additional alcohol sales outlets in the City without appropriate conditions of approval,
13 review, or proper vetting. Furthermore, the issuance of any new alcohol related CUP
14 permit exemptions may be at odds with recommended zoning regulations that are, or
15 shortly will be, studied by the City's Planning staff and the Planning Commission.

16 Section 7. This ordinance is an emergency ordinance duly adopted by
17 the City Council in accordance with Long Beach City Charter section 211 by a vote of at
18 least five (5) of its members and shall take effect immediately. The City Clerk shall certify
19 to a separate roll call and vote on the question of the emergency of this ordinance and to
20 its passage by the vote of five (5) members of the City Council of the City of Long Beach,
21 and shall cause the same to be posted in three (3) conspicuous places in the City of Long
22 Beach.

23 Section 8. This ordinance shall also be adopted by the City Council as a
24 regular ordinance, to the end that in the event of any defect or invalidity in connection
25 with the adoption of this ordinance as an emergency ordinance, the same shall,
26 nevertheless, be and become effective on the thirty-first day after it is approved by the
27 Mayor.

28 Section 9. The City Clerk shall certify to the passage of this ordinance by

1 the City Council of the City of Long Beach and shall cause the same to be posted in three
2 conspicuous places in the City of Long Beach.

3 I hereby certify that on a separate roll call and vote which was taken by the
4 City Council of the City of Long Beach upon the question of the emergency of this
5 ordinance at its meeting of _____, 2015, the ordinance was declared to be
6 an emergency by the following vote:

7 Ayes: Councilmembers: _____
8 _____
9 _____

10 Noes: Councilmembers: _____
11 _____

12 Absent: Councilmembers: _____
13 _____

14
15 I further certify that thereafter, at the same meeting on _____, 2015,
16 upon a roll call and vote on adoption of the ordinance, it was adopted by the City Council
17 of the City of Long Beach by the following vote:

18 Ayes: Councilmembers: _____
19 _____
20 _____

21 Noes: Councilmembers: _____
22 _____

23 Absent: Councilmembers: _____
24 _____

25
26 I further certify that the foregoing ordinance was thereafter adopted on final
27 reading by the City Council of the City of Long Beach at its meeting of _____,
28 2015, by the following vote:

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Clerk

Approved: _____
(Date)

Mayor