



City of Sonoma Planning Commission **AGENDA**

Regular Meeting of March 14, 2013 -- 6:30 PM
Community Meeting Room, 177 First Street West
Sonoma, CA 95476

Meeting Length: No new items will be heard by the Planning Commission after 10:30 PM, unless the Commission, by majority vote, specifically decides to continue reviewing items. If an item is not heard due to the length of the meeting, the Commission will attempt to schedule a special meeting for the following week. If a special meeting is necessary, potential dates will be established at the close of this meeting, and a date set as soon as possible thereafter.

CALL TO ORDER – Chair, Robert Felder

Commissioners: Gary Edwards
Mark Heneveld
Matt Howarth
Chip Roberson
Mathew Tippell
Bill Willers (Alternate)

*Be Courteous - **TURN OFF** your cell phones and pagers while the meeting is in session.*

PLEDGE OF ALLEGIANCE

COMMENTS FROM THE PUBLIC: Presentations by audience members on items not appearing on the agenda.

MINUTES: Minutes from the meeting of February 14, 2013.

CORRESPONDENCE

ITEM #1 – PUBLIC HEARING

REQUEST:

Consideration of a Use Permit to convert an existing second unit into a full residence, including possible exception to covered parking requirements.

Applicant/Property Owner:

Bill Dimick AIA/Anton Hoffman

Staff: David Goodison

Project Location:

20419 Fifth Street East

General Plan Designation:

Sonoma Residential (SR)

Zoning:

Planning Area: Southeast Area

Base: Sonoma Residential (R-S)

Overlay: None

RECOMMENDED ACTION:

Approve with conditions.

ITEM #2 – DISCUSSION

ISSUE:

Continued review and discussion of wine tasting facilities.

Staff: David Goodison

RECOMMENDED ACTION:

Forward recommendations to City Council.

ITEM #3 – DISCUSSION

ISSUE:

Continued review and discussion of City parking standards.

Staff: David Goodison

RECOMMENDED ACTION:

Provide direction to staff.

**ISSUES UPDATE
COMMENTS FROM THE COMMISSION
COMMENTS FROM THE AUDIENCE
ADJOURNMENT**

I do hereby certify that a copy of the foregoing agenda was posted on the City Hall bulletin board on March 8, 2013.

CRISTINA MORRIS, ADMINISTRATIVE ASSISTANT

Rights of Appeal: **Any decision of the Planning Commission may be appealed to the City Council.** Appeals must be filed with the City Clerk within fifteen (15) calendar days following the Planning Commission's decision, unless the fifteenth day falls on a weekend or a holiday, in which case the appeal period ends at the close of the next working day at City Hall. Appeals must be made in writing and must clearly state the reason for the appeal. Appeals will be set for hearing before the City Council on the earliest available agenda. A fee is charged for appeals.

Copies of all staff reports and documents subject to disclosure that relate to any item of business referred to on the agenda are available for public inspection the Monday before each regularly scheduled meeting at City Hall, located at No. 1 The Plaza, Sonoma CA, (707) 938-3681. Any documents subject to disclosure that are provided to all, or a majority of all, of the members of the Planning Commission regarding any item on this agenda after the agenda has been distributed will be made available for inspection at the Administrative Assistant office, No. 1 The Plaza, Sonoma CA during regular business hours.

If you challenge the action of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the public hearing described on the agenda, or in written correspondence delivered to the Administrative Assistant, at or prior to the public hearing.

In accordance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk (707) 933-2216. Notification 48-hours before the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Agenda Item Title: Application for a Use Permit authorizing exceptions from the height and setback requirements to convert an existing accessory structure into a second dwelling unit.

Applicant/Owner: Bill Dimick/Anton Hoffman

Site Address/Location: 20419 Fifth Street East

Staff Contact: David Goodison, Planning Director
Staff Report Prepared: 3/8/13

PROJECT SUMMARY

Description: Application of Bill Dimick for a Use Permit authorizing the conversion of an existing second unit into a residence (include consideration of an exception to the covered parking requirement) at 20419 Fifth Street East.

General Plan Designation: Sonoma Residential (SR)

Planning Area: Southeast Area

Zoning: **Base:** Sonoma Residential (R-S) **Overlay:** None

Site Characteristics: The subject property is a 2.25-acre parcel located on the west side of Fifth Street East, north of Napa Road. The property is currently developed with a single-family home, a swimming pool, and a two-story structure with a second unit above and garage space and workshop below.

Surrounding Land Use/Zoning: **North:** Single-family homes/Sonoma Residential
South: A single-family home, family farm/County zoning
East: Rural residential/County zoning
West: Single-family homes/ Sonoma Residential

Environmental Review:

<input checked="" type="checkbox"/> Categorical Exemption	<input type="checkbox"/> Approved/Certified
<input type="checkbox"/> Negative Declaration	<input checked="" type="checkbox"/> No Action Required
<input type="checkbox"/> Environmental Impact Report	<input type="checkbox"/> Action Required
<input type="checkbox"/> Not Applicable	

Staff Recommendation: Approve subject to conditions.

PROJECT ANALYSIS

BACKGROUND

The subject property is a large remainder parcel (2.25 acres in size) that was separated out from the Starr Ranch subdivision, a 20-lot single-family development approved in 2003. The Starr Ranch development adjoins the property on the north and west. Prior to its subdivision, the property was outside of city limits and the home and accessory structures on the remainder parcel were developed when the property was under the jurisdiction of Sonoma County. Development on the site consist of a primary residence, a swimming pool and cabana, and a two-story detached structure with a garage and shop area on the ground floor and a second unit above. This structure, which is the subject of the current application, is located in the northwest quadrant of the site and is set back approximately 50 feet from the northern and western property lines.

DETAILED PROJECT DESCRIPTION

The proposal involves converting an existing two-story accessory structure, currently used as a shop, a garage, and a second unit into a second residence with home office space. This would be accomplished through an internal reconfiguration, with the second unit converted into a home office area and with the lower floor converted into a residential space. The footprint of the building would remain the same. Minimal changes would be made to the exterior of the building, most notably the replacement of the garage door on the northern elevation with a sliding glass door. Because second units are limited to an area of 850 square feet, the completed residence would not qualify for that designation. However, due to the size of the site and its residential zoning designation, it may be developed with additional units subject to Planning Commission review. Further details are provided in the attached project narrative.

GENERAL PLAN CONSISTENCY (**Not Applicable to this Project**)

The property is designated Sonoma Residential by the General Plan. This designation is intended primarily for single-family housing and duplexes, with attached or clustered development allowed by use permit. The project is consistent with the goals and policies of the *City of Sonoma 2020 General Plan*, which allows for additional residential development of the site.

DEVELOPMENT CODE CONSISTENCY (**Not Applicable to this Project**)

Use: The property is zoned Sonoma Residential (R-S). A primary residential unit would be permitted as a of right on a parcel; however, additional units (except for a second unit) may only be allowed subject to use permit review by the Planning Commission.

Floor Area Ratio (FAR)/ Lot Coverage/Setbacks/Building Height: Because the proposed project involves the reconfiguration of an existing structure that would not be expanded, no issues are raised with respect to F.A.R., lot coverage, setbacks, or building height. Staff would note, however, that the structure proposed for the conversion to a residence is fully conforming in all of those areas.

Parking: Normally, one covered parking is required for a single-family residence (or for a detached second unit, for that matter). The existing parking associated with the second would be eliminated through the conversion of the lower floor to living area. While there is quite a bit of off-street parking on the site as a whole, including gravel drives adjacent to the structure on the north and east, a covered parking space is not shown on the site plan. The Exception findings are set forth below for the Planning Commission's consideration, if that is a direction that the Commission wishes to discuss:

1. The adjustment authorized by the Exception is consistent with the General Plan, any applicable Specific Plan, and the overall objectives of this Development Code;

2. An exception to the normal standards of the Development Code is justified by environmental features or site conditions; historic development patterns of the property or neighborhood; or the interest in promoting creativity and personal expression in site planning and development;
3. Granting the Exception will not be detrimental to the public health, safety, or welfare, or injurious to the property or improvements in the vicinity and in the same zoning district.

However, since a carport could be readily located in proximity of the residence, staff is recommending that as a condition of approval.

**CONSISTENCY WITH OTHER
CITY ORDINANCES/POLICIES** (Not Applicable to this Project)

ENVIRONMENTAL REVIEW (Not Applicable to this Project)

Pursuant to Section of 15301 of the State CEQA Guidelines, minor alterations to existing structures that involve negligible or no expansion of use are categorically exempt from the provisions of CEQA (Class 1 – Existing Facilities).

DISCUSSION OF PROJECT ISSUES

In this case, the proposal involves converting an existing structure that includes a second unit into a residence. On a typical residential parcel, this would not even be a consideration, but the size of the subject property is such that it has considerable additional development potential. In terms of compatibility with adjoining development, while there would be some intensification of the use due to the increased residential area and the creation of home office space, the nature of the existing use would not change substantially. In addition, although the existing building would be reconfigured internally, there would be no increase in its size. Even apart from its extensive setbacks, the conversion of the building into a full residential unit would not create any privacy issues with respect to adjoining properties. Since the second floor is already configured as a second unit.

Adding a second full residence to a property with significant development potential may raise the question as to whether long-term options for the use of the property are being foreclosed. In this instance, however, the new residence would be established within an existing structure that is already used as a second unit. Apart from the provision of a covered parking space, which can readily be accomplished, staff has not identified any issues in conjunction with this application.

RECOMMENDATION

Staff recommends approval of the Use Permit, subject to the attached conditions of approval.

Attachments:

1. Findings
2. Draft Conditions of Approval
3. Location map
4. Project Narrative
5. Site Plan, Floor Plans (as built and as proposed), and Elevations (existing)

cc: Bill Dimick
292 France Street
Sonoma, CA 95476

Anton Hoffman
20149 Fifth Street East
Sonoma, CA 95476

City of Sonoma Planning Commission
FINDINGS OF PROJECT APPROVAL
Hoffman Second Residence – 20419 Fifth Street East

March 13, 2013

Based on substantial evidence in the record, including but not limited to the staff report, and upon consideration of all testimony received in the course of the public review, including the public review, the City of Sonoma Planning Commission finds and declares as follows:

Use Permit Approval

1. That the proposed use is consistent with the General Plan and any Specific Plan;
2. That the proposed use is allowed with a conditional Use Permit within the applicable zoning district and complies with all applicable standards and regulations of the Development Code (except for approved Variances and Exceptions).
3. The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity; and
4. The proposed use will not impair the architectural integrity and character of the zoning district in which it is to be located.

City of Sonoma Planning Commission
CONDITIONS OF PROJECT APPROVAL
Hoffman Second Residence – 20419 Fifth Street East

March 13, 2013

1. The project shall be constructed in conformance with the approved site plan, floor plans and project narrative, except as modified by these conditions.

Enforcement Responsibility: Planning Department
Timing: Through the review of building plans

2. A covered parking serving the second residence shall be required.

Enforcement Responsibility: Planning, Building, and Public Works; Police Department
Timing: Ongoing

3. One covered parking space shall be provided and maintained on-site for the second unit.

Enforcement Responsibility: Planning Department, Building Department
Timing: Prior to the issuance of an occupancy permit

4. Individual sale of either the main or the second residence shall be prohibited.

Enforcement Responsibility: Planning Division
Timing: Ongoing

5. All Building and Fire Code requirements shall be met.

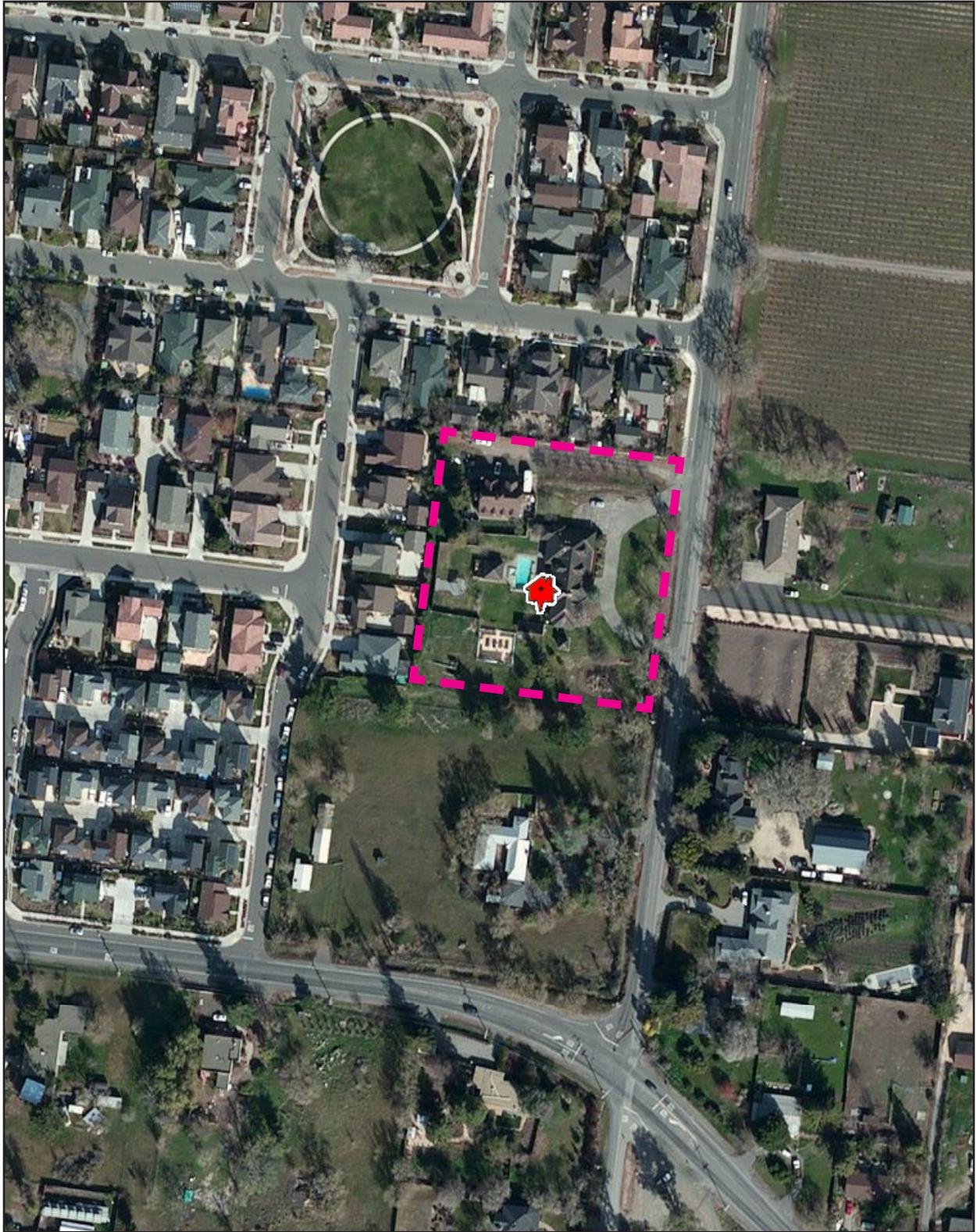
Enforcement Responsibility: Building Department/Fire Department
Timing: Prior to construction

6. A sewer clearance shall be provided to the City of Sonoma Building Division verifying that all applicable sewer fees have been paid prior to the issuance of any building permit. **Note: Substantial fees may apply for new sewer connections and/or the use of additional ESDs from an existing sewer connection. The applicant is encouraged to check with the Sonoma County Water Agency immediately to determine whether such fees apply.**

Enforcement Responsibility: Building Division
Timing: Prior to issuance of a building permit

7. The following agencies must be contacted by the applicant to determine permit or other regulatory requirements of the agency prior to issuance of a building permit, including the payment of applicable fees:

- a. *Sonoma County Water Agency* [For sewer fees]
 - b. *Sonoma Valley Unified School District* [For school impact fees]
 - c. *City of Sonoma Water Department* [For water fees]
- Enforcement Responsibility: Building Department; Public Works Department*
Timing: Prior to issuance of a building permit



20419 Fifth Street East
Hoffman Second Residence

WILLIAM L. DIMICK AIA ARCHITECT

Proposal Statement
Second Unit Remodel and Addition
20419 Fifth Street East
Sonoma, Ca
APN 128-281-031

The original project was designed and built out in the mid 1980's, and was permitted by the Sonoma County Building Department. Since then the property was annexed to the City of Sonoma, and the rear portion of the property was split off and developed as a part of a single family housing tract. The net result was the existing residence, barn and second living unit, pool and cabana on a 2.25 Ac parcel. The then existing septic system was abandoned and the property was made part of the Sonoma Valley Sanitation District.

The current owner plans an extensive remodel to the existing structures with new exterior and interior finishes, and some minor relocation of interior spaces within the existing residence. This proposal is to address the proposed remodel of the existing barn and second living unit.

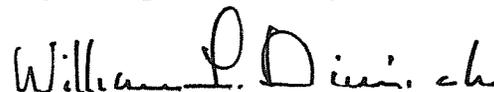
As shown on the attached as-built floor plan, the original structure was designed and built as a first floor shop and parking / storage for recreational vehicles and "man toys". The partial second floor was a second living unit with living / kitchen area, two bedrooms, a bath and exterior deck area. An interim owner had remodeled the first floor area as living space, without proper permits, and was cited with an abatement procedure. Those improvements have since been removed and the citation has been lifted.

The current proposal as shown on Sheet P-1, includes a relocated and expanded second living unit on the first floor and home office space on the second. The two areas are connected by a new proposed interior stairway. The combined areas exceed the minimal allowable floor area for ministerial approval and require conditional use permit consideration.

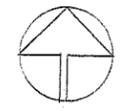
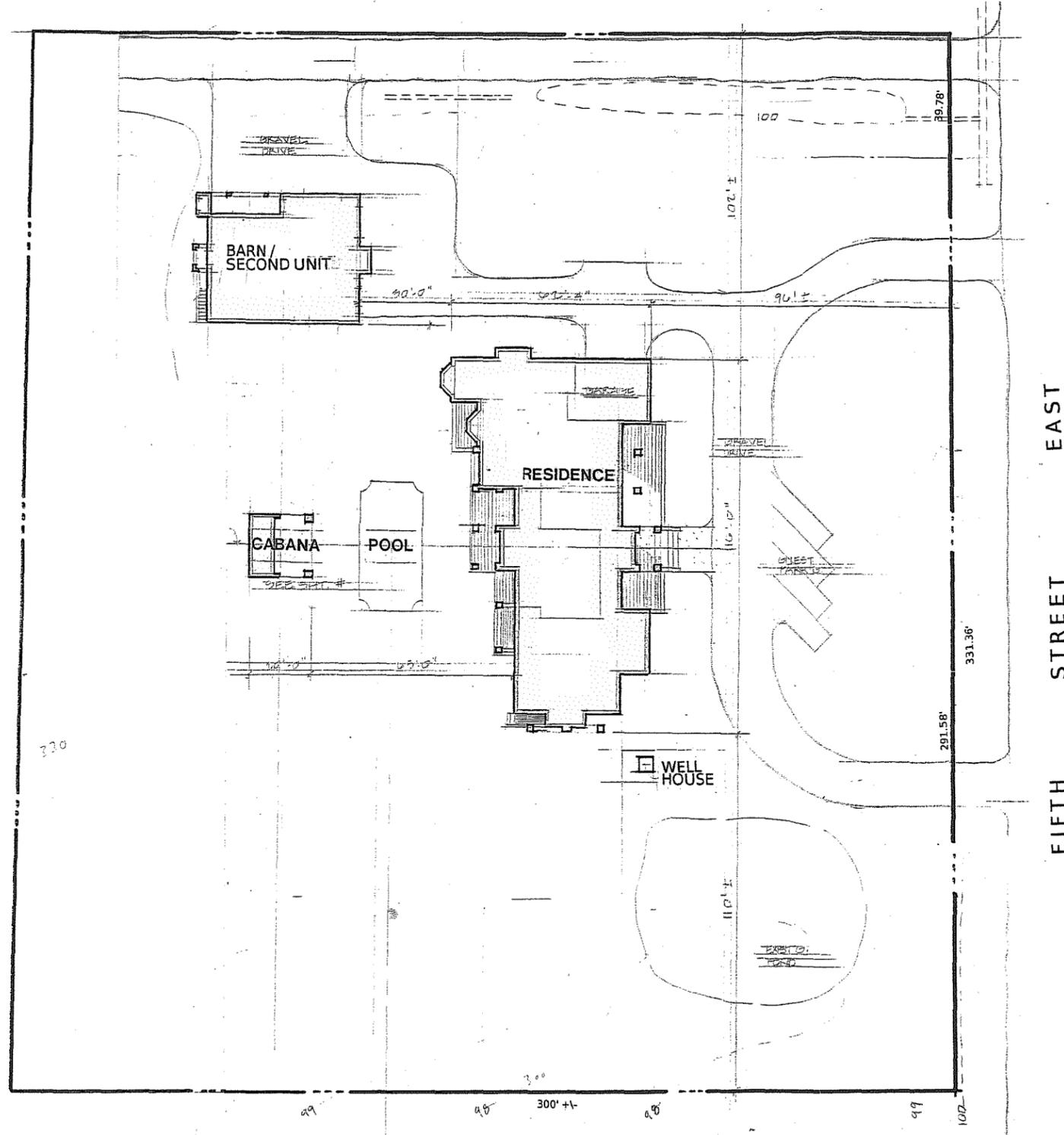
The additional floor area is insignificant due the following:

- (1) The structure is preexisting and all remodel work is within the existing footprint, with only minor changes in entry doors and window locations.
- (2) On the 2.25 Ac site, the structure is compatible with surrounding neighborhood and will be updated with new exterior materials, finishes and landscaping to match the residence.
- (3) Existing setbacks, open space, and parking area are more than adequate for the proposed use.
- (4) By way of comparison, the existing site of 2.25 acres would accommodate a single family residential development of 12 to 14 houses, with far more impact than the proposed addition floor area.

The owner therefore requests a conditional use permit be granted per current City of Sonoma zoning guidelines.



William L. Dimick AIA Architect
2-22-2013



AS-BUILT
SITE PLAN

1" = 20'

1
AB-1

AREA TABULATION:

GROSS SITE AREA	99,600 SQ FT	2.28 AC
BUILDING COVERAGE		
RESIDENCE	5,850	
BARN	1,968	
CABANA	400	
TOTAL	8,218	8.25 %

FIFTH STREET EAST

REVISIONS	BY

WILLIAM L. DIMICK AIA
ARCHITECT
282 FRANCE ST. SONOMA CALIF.
95476 TELEPHONE 707-938-5726

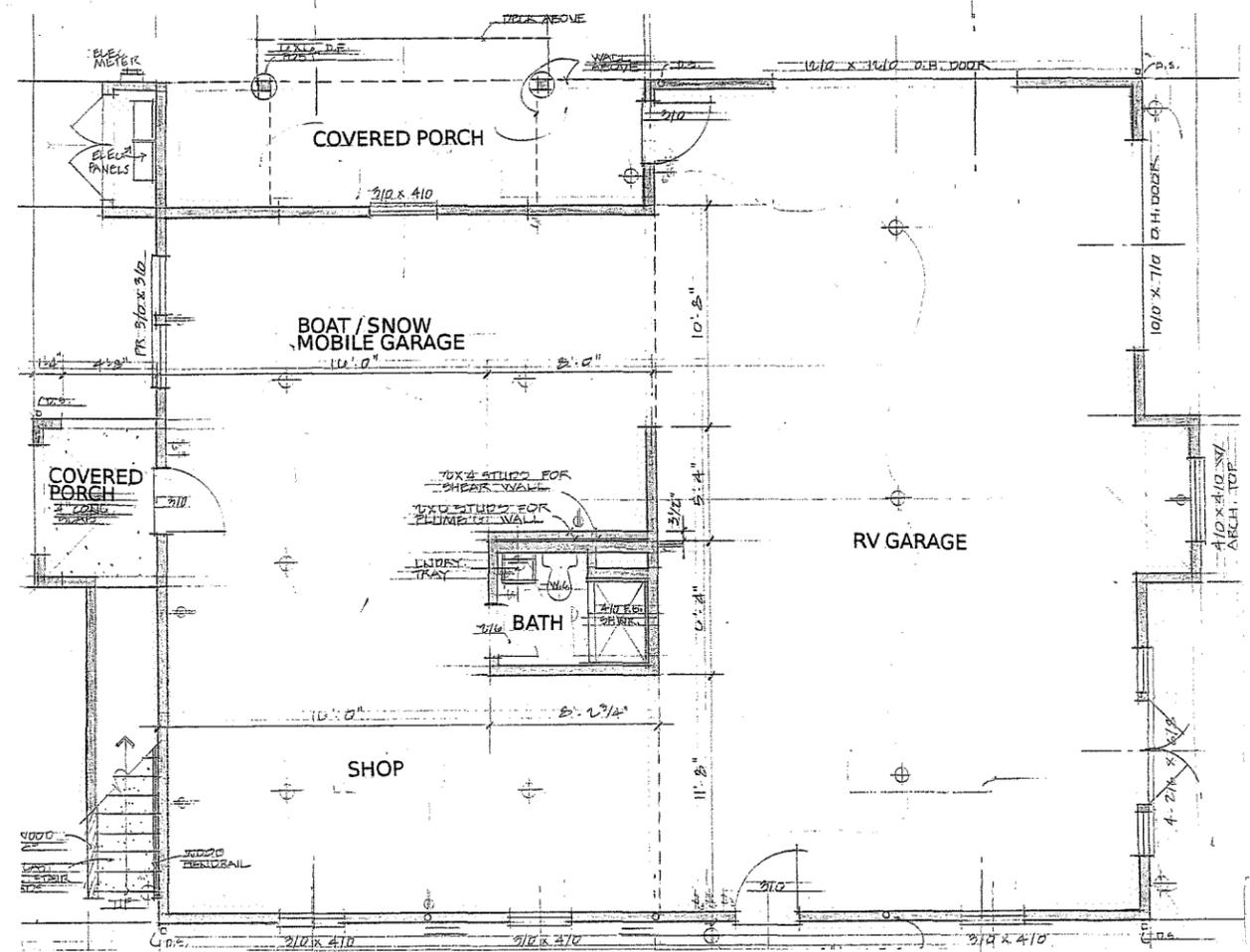
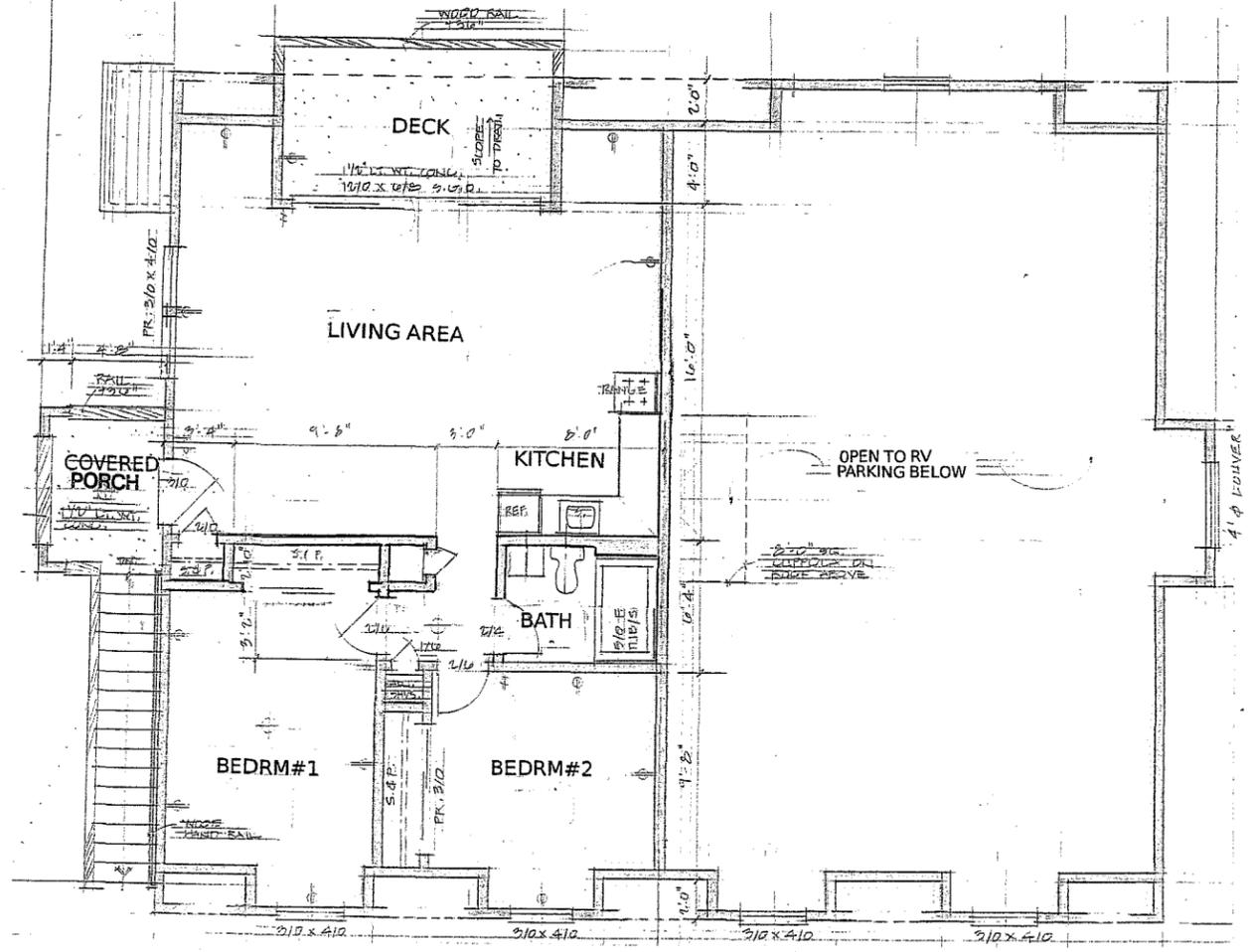
REMODEL
HOFFMAN RESIDENCE
20419 FIFTH STREET EAST
SONOMA, CA

Date 2-22-2013
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AB-1
Of 1 Sheets

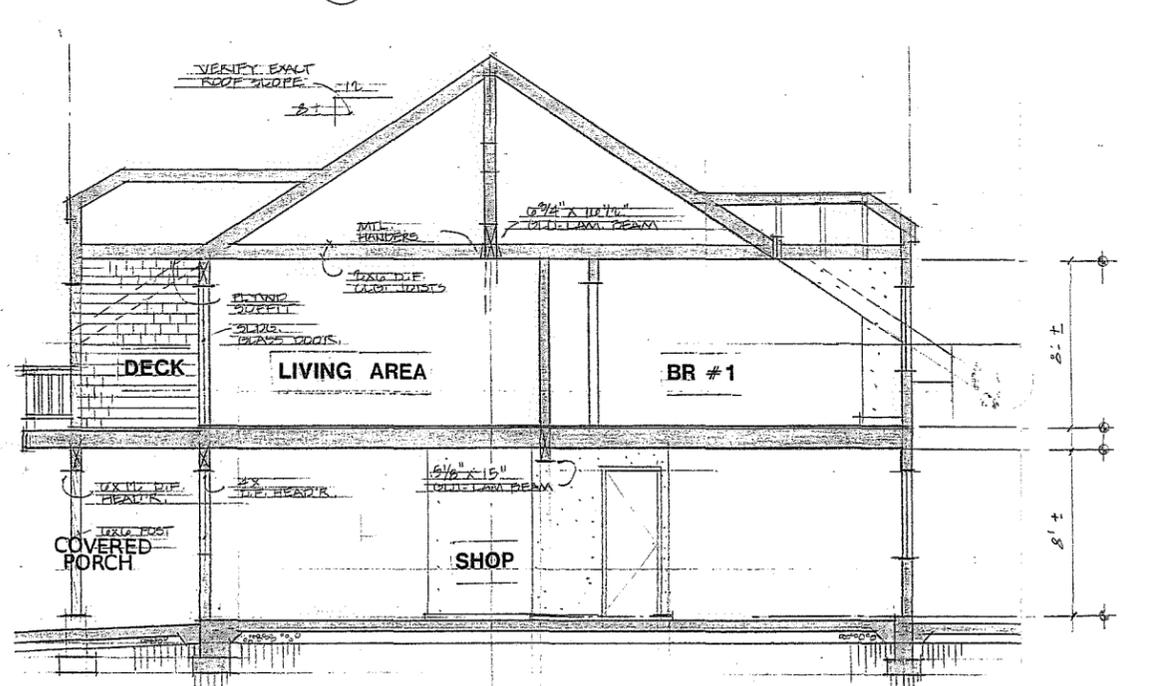
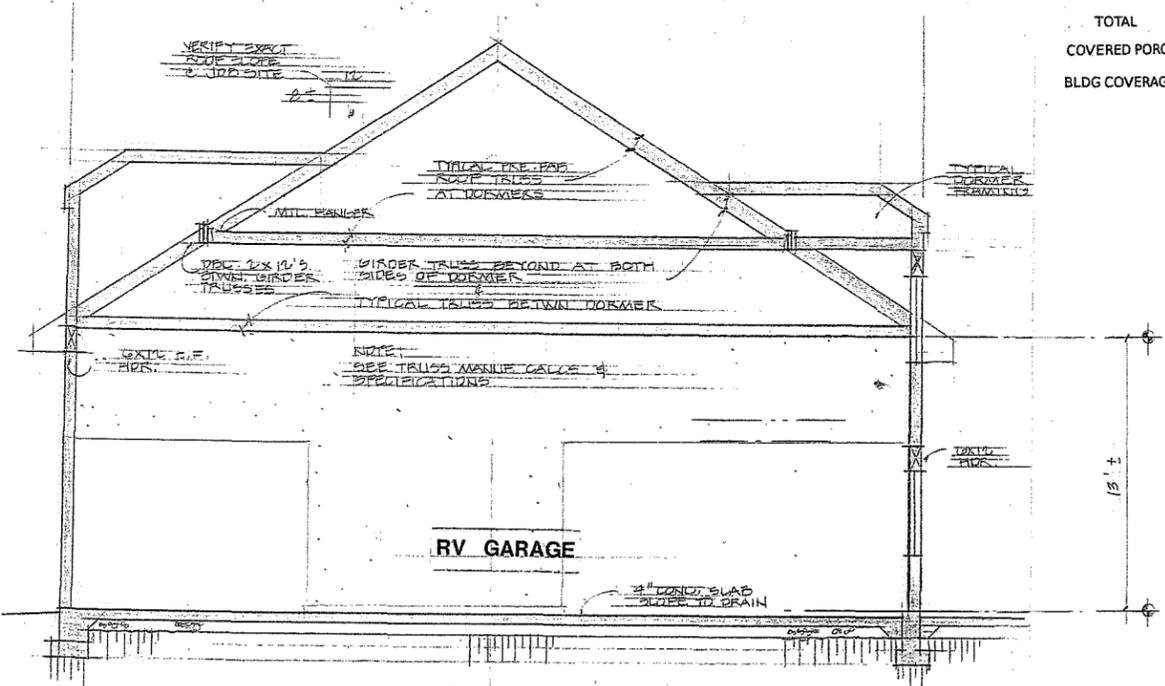
REVISIONS	BY

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 292 FRANCE ST. SONOMA CALIF.
 95476 TELEPHONE 707-938-5725
ARCHITECT



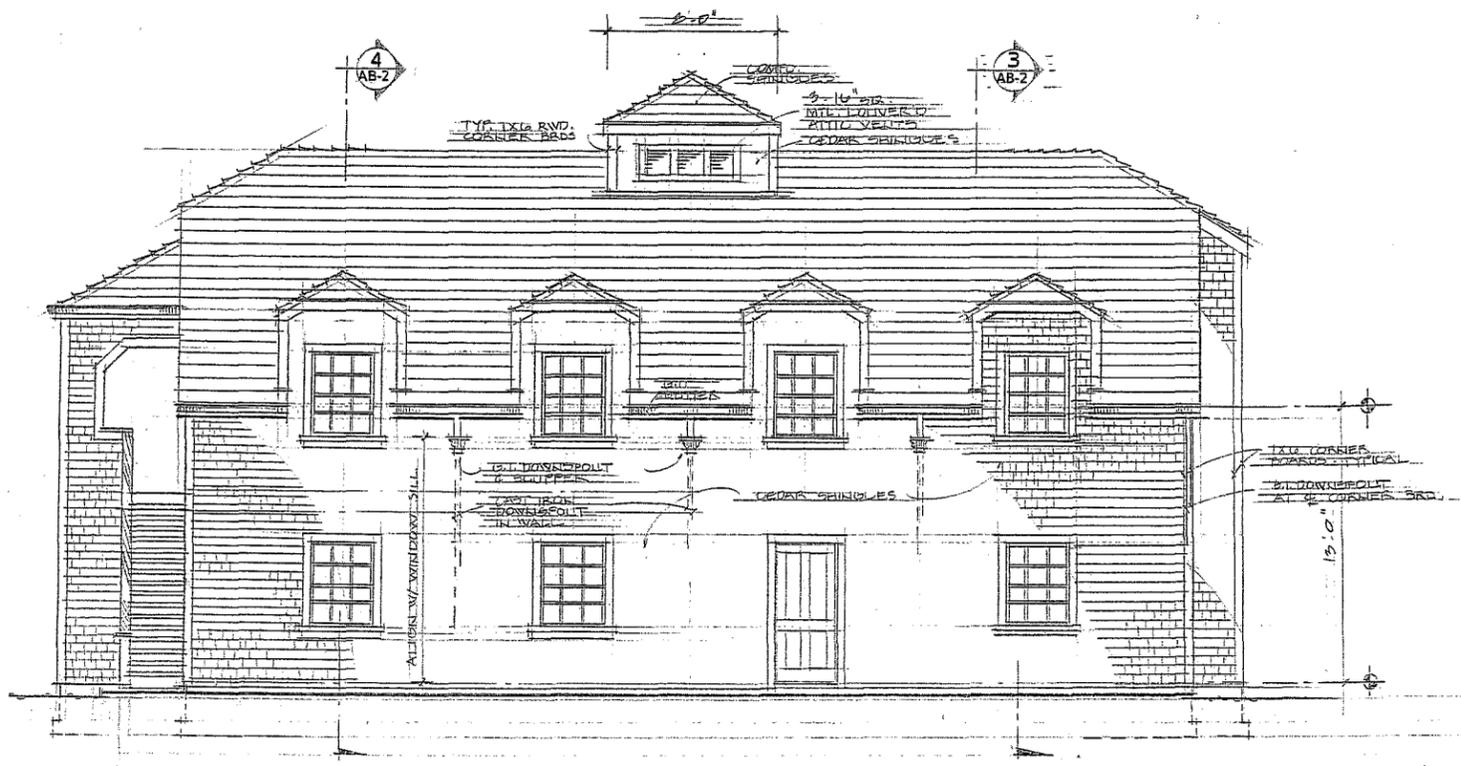
AREA TABULATION:

FIRST FLOOR	1776
SECOND FLOOR	864
TOTAL	2640 SQ FT
COVERED PORCHES	240 SQ FT
BLDG COVERAGE	1968 SQ FT

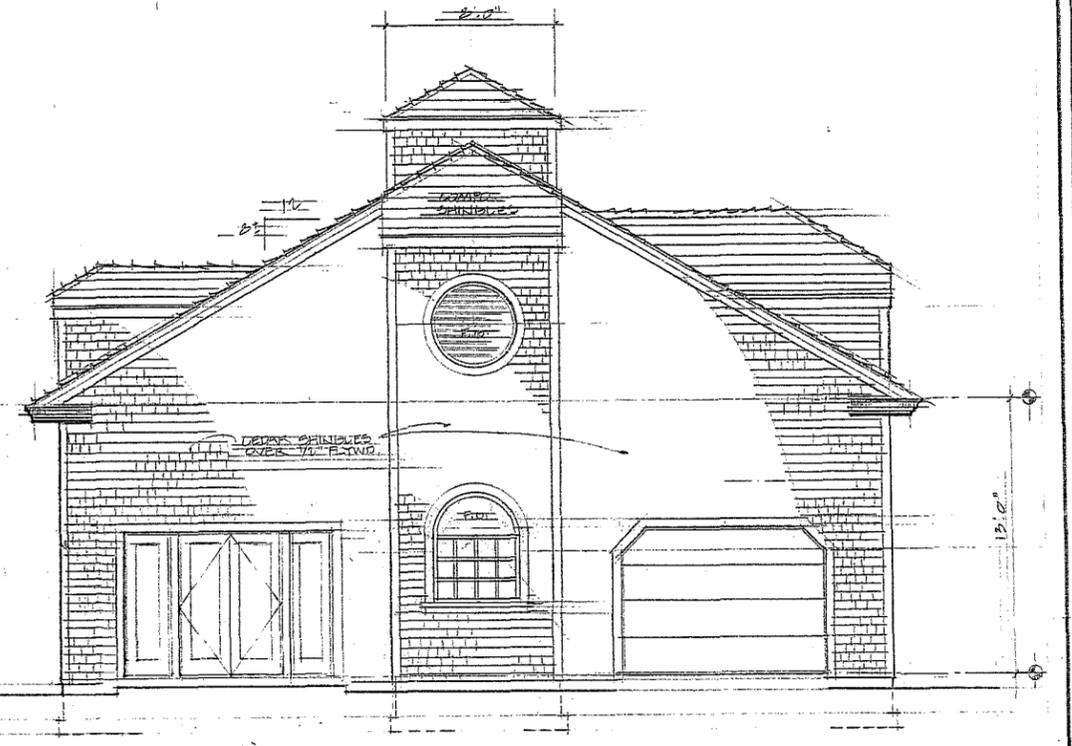


REMODEL
HOFFMAN 2nd UNIT
 20419 FIFTH STREET EAST
 SONOMA, CA

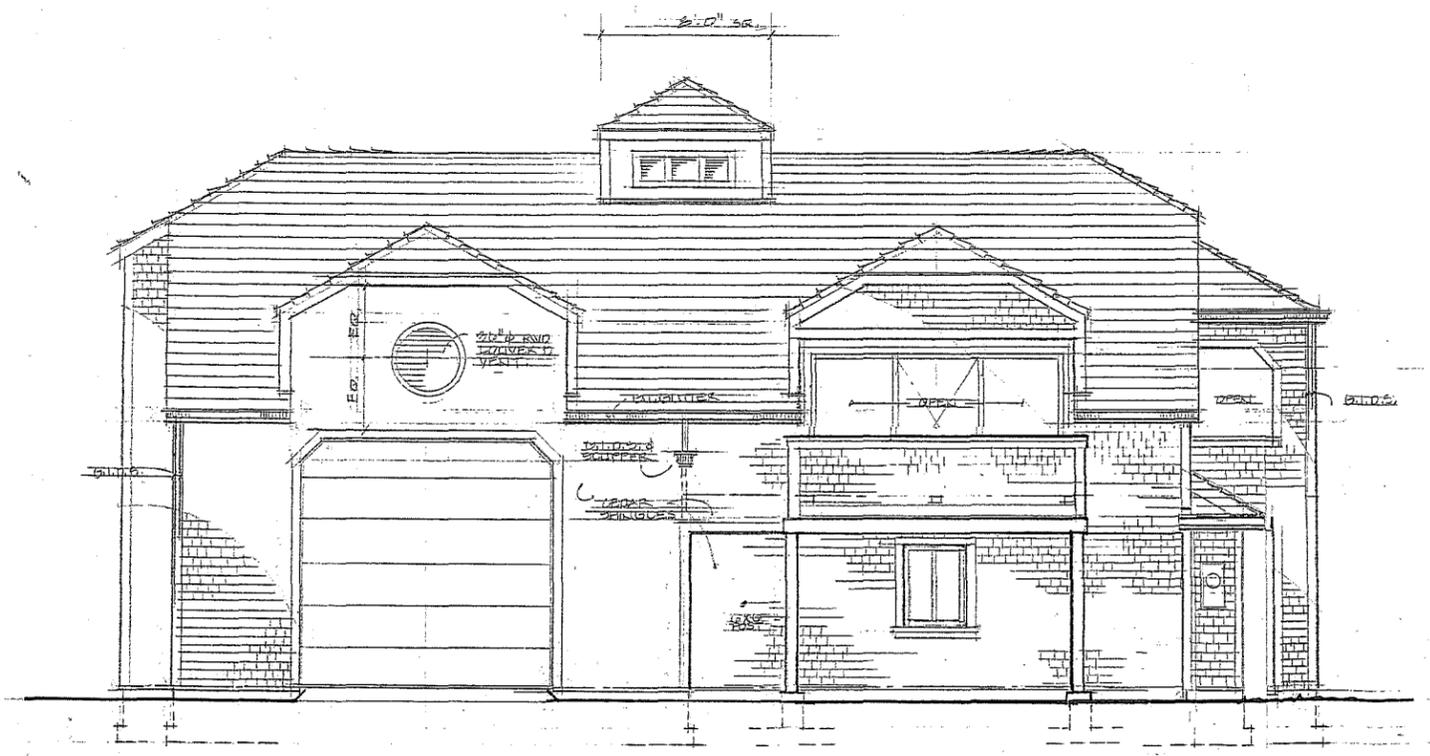
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AB-2
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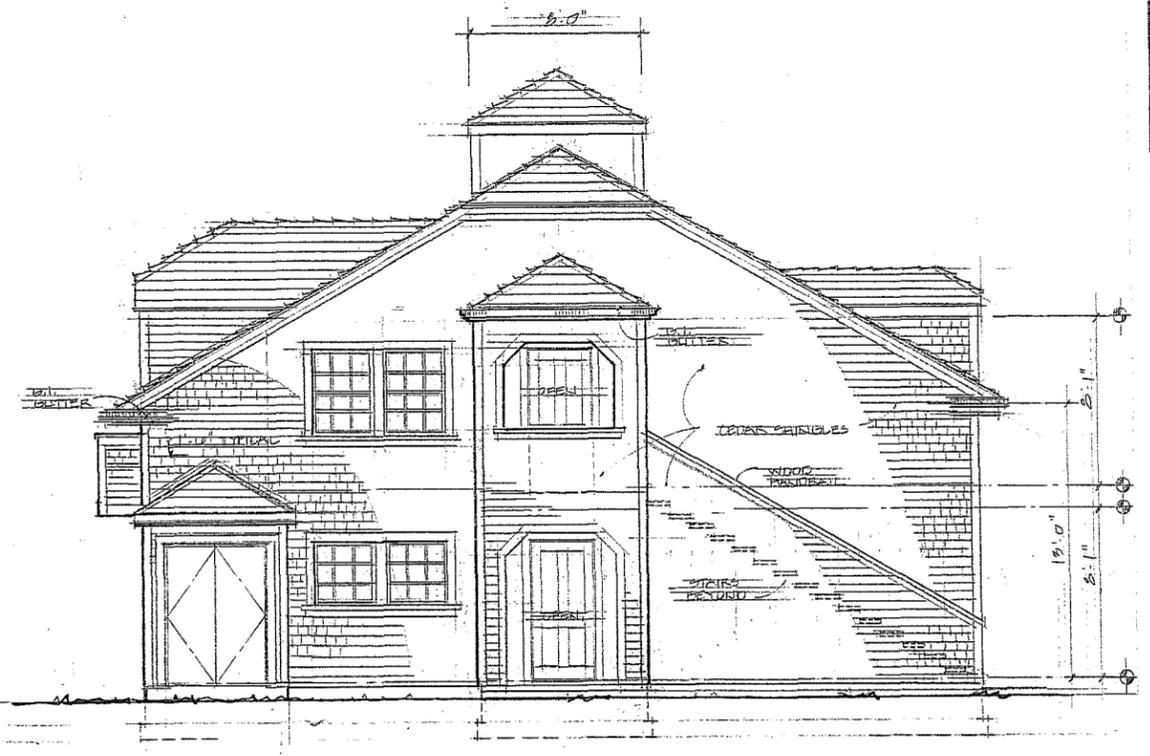
1 SOUTH ELEVATION 1/4" = 1'-0"



2 EAST ELEVATION 1/4" = 1'-0"



3 NORTH ELEVATION 1/4" = 1'-0"



4 WEST ELEVATION 1/4" = 1'-0"

WILLIAM L. DIMICK AIA
 292 FRANCE ST. SONOMA CALIF.
 ARCHITECT 95476 TELEPHONE 707-938-5126

REMODEL
 HOFFMAN 2nd UNIT
 20419 FIFTH STREET EAST
 SONOMA, CA

Date 2-22-2013
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 Job 1301
 Sheet AB-3
 Of Sheets

M E M O

To: Planning Commission
From: Planning Director Goodison
Re: Continued discussion of issues and options associated with the regulation of wine tasting facilities

Background

At its meeting of December 13, 2012, the Planning Commission reviewed and discussed background information on wine-tasting facilities, including their presence in the downtown area, current regulations, and various issues associated with them. Wine and wine-making is part of the identity of Sonoma and wine sales have long been an element of the downtown community. However, in recent years, the City has seen a growing number of wineries establishing a wine-tasting presence in the Plaza and, more recently, an increase in tasting rooms not affiliated with a particular winery. In the database of businesses located within the Plaza Retail Overlay zone maintained by the Economic Development Coordinator, a total of 135 ground-floor businesses are identified within the Overlay Zone, of which 15 are purely wine-tasting and 4 are a combination of wine tasting and other retail which represents 15.5% of the ground-floor businesses within the zone. Adding the Roche facility, Hawkes, Walt, and the recently approved Three Sticks and JAQK facilities (all of which are outside of the Plaza Retail Overlay zone, brings the number of wine-tasting facilities in the Plaza area to 24. This number does not include restaurants and bars, which represent 18.6% of businesses within the Plaza Retail Overlay zone.

Existing Regulations

As previously reported to the Planning Commission, although wine-tasting is not specifically defined as a use in the City's Development Code, it is considered to fall under the definition of "general retail," which is a permitted use in the Commercial zone. However, in order to be considered as "general retail", it has been staff's interpretation that food preparation and food service (except for bread, crackers, etc.) may not be a component of use as otherwise it would be classified as a restaurant, for which a use permit is required. In addition, staff has made the interpretation that outdoor seating associated with a wine-tasting facility falls under the definition of "outdoor retail sales and activities," for which use permit review is required.

Wine-tasting facilities are also regulated by the State Office of Alcohol and Beverage Control (ABC). The ABC licensing process makes a distinction between venues that are owned and operated by a specific winery and venues that are operated by a third-party business person that may be offering wines or beer from several sources. In the first instance, there is no local review of the ABC license, as the facility is allowed to operate under parent winery's Type 02 license. But in the second instance, the license application is subject to a process that includes a referral to the Police Chief, who must make a finding of "public convenience or necessity" if the license is to be issued. Another important consideration is that the ABC license (Type 42) associated

with this type of business allows activities that go beyond how the City defines wine tasting and is the same type of license required to operate a bar or tavern.

Issues

Issues identified by staff with respect to wine tasting facilities and by the Planning Commission in its discussion on December 12th include the following:

- Wine tasting facilities increase the number of establishments at which alcohol is served and downtown Sonoma has a high concentration of such uses. The Police Department has become increasingly concerned about the number of establishments in the downtown that serve alcohol. They note that of drunk driving arrests of first-time offenders, 55% have come from ABC-licensed public venues. The Department's concern in this regard is not specifically about wine-tasting facilities, but rather the total number of alcohol-serving establishments. (See the attached memo from the Police Chief.)
- Although considered as retail, the intensity of a wine-tasting business is expressed in seating, rather than square feet, which can lead to some challenges in how staff interprets whether or not parking requirements are being met.
- Wine-tasting facilities have the potential to evolve into de facto bars or taverns, a process known as "morphing". This problem is related to the fact that the ABC license for a wine-tasting facility operated by a business other than a winery is the same license that a bar would need to obtain. Therefore the City cannot rely on the ABC permit as a method of control with respect to hours of operation or limitations on the type of service (i.e., limiting service to tastings as opposed to selling wine or beer by the glass.).
- While the Police Chief must make a finding of finding of "public convenience or necessity" in order for an ABC license to be issued for a non-winery wine-tasting facility, there needs to be a rational and equitably-applied basis for denying a license.
- The increasing number of wine-tasting facilities may ultimately have an adverse effect the character of the Plaza. Wine tasting facilities are less likely than many types of retail and restaurants facilities to attract a local presence. That said, the density of wine-tasting businesses in certain settings have been positive, such as in Sonoma Court Shops.
- Because there is no definition of wine tasting facilities in the Development Code, there is potential for inconsistent interpretations as to what does and does not constitute a wine-tasting use that can be considered falling within the category of "general retail."

Observations of the Economic Development Coordinator

In discussing this issue with the Economic Development Coordinator, she notes that few of the tasting rooms that have opened in recent years (or are in the process of opening) have replaced retail shops. Some have opened in what were previously office locations (e.g. Hawkes, Roessler, R2, Sojourn), some have co-located with retail (Highway 12, Spann), and some have gone into long-vacant spots and/or spots that have proven very difficult for retail (e.g. vine alley: Hay-

wood, Two Amigos, Bryter; also Eric K James in the back of the Mercado). In her view, displacement of other retail uses by wine-tasting businesses has been limited. She also points out that the addition of these businesses has benefitted the Plaza by reducing the overall vacancy rate, including in tenant spaces that have traditionally been slow to fill. Lastly, she notes that at the same time that the number of wine-tasting businesses has increased, there has been a reduction in real estate offices as they consolidate and move off-plaza to reduce costs.

Regulatory Options

Permitting Requirements

The basic option in this area is whether or not to require use permit review.

1. Two-Tier (Permitted/Use Permit)

Establish a land use definition for wine tasting facilities along with basic operating standards (see example below). A use permit would not be required unless a change from the basic operating standards was sought.

2. Use Permit

Require a use permit in all instances where wine-tasting is proposed. Any use permit approval is subject to the Planning Commission making the basic findings of General Plan consistency, zoning consistency, and compatibility with neighboring uses. If a use permit requirement is established for wine-tasting facilities, additional findings specific to that use could be required. Possibilities in this area include:

- Concentration of similar uses within a specified area or distance from the proposed site. (A finding in this regard would be difficult to craft given the number of wine tasting facilities that already exist in the downtown area).
- Hours of operation. (A finding related to hours of operation would give the Planning Commission and business owners greater flexibility than an across-the-board standard.)
- Design features that promote security and the control of the premises.

The Planning Commission may have other suggestions for possible findings.

General Operating Standards

Whether or not a use permit is required to authorize a wine tasting facility, it would be useful to establish basic operating requirements for such uses. The following suggestions are mainly drawn from a draft ordinance Sonoma County ordinance (attached) that was intended to address facilities serving alcoholic beverages:

- Limitations on hours of operation (e.g., 11 a.m. to 7 p.m.)
- Limitations on service (e.g., tastings only, no wine by the glass).
- Requirements for staff training in responsible beverage service.
- On-going compliance with ABC and County Health Department requirements.

- Limitations on food service (e.g., no charge for food, no cooking on premises).

On the matter of parking standards, it is staff's view that the simplest approach would be to apply the retail parking ratio of 1 space per 300 square feet of building area, while controlling the number of seats associated with an individual business through use permit review. Alternatively, the restaurant parking ratio of one space for every four seats could be applied. However, this option would likely result in the creation of a great many non-conforming uses.

Note: This discussion is focused on wine tasting facilities, but the City could consider adopting operating standards that apply more broadly to business that sell alcoholic beverages as contemplated in the draft Sonoma County Ordinance). In staff's view, this may be less of a zoning issue and more of a broader policy question for the City Council to address.

Applicability to Existing Business

If new regulations are adopted, consideration needs to be given as to how or whether they would be applied to existing business. Options in this regard in the following:

- Existing wine-tasting facilities are considered legal non-conforming uses. New regulations do not apply except in the case of a proposed expansion or intensification of use.
- Existing wine-tasting facilities are considered legal non-conforming uses; however a use permit under the updated regulations would be required under the following circumstances: 1) change/transfer in ABC license; 2) violation of ABC license; 3) any expansion or intensification of the use.
- Existing wine tasting facilities that do not comply with whatever basic operating standards are adopted are required to obtain a use permit under the new regulations and are given a grace period in which to do so.

It is important to recognize that the wine-tasting business that are operating in Sonoma are doing so in good faith under the current rules and to the extent that new regulations are adopted that will be applied to such businesses, the City needs to reach out early on in the process to obtain their input and work cooperatively to achieve compliance.

Recommendation

Staff is seeking direction from the Planning Commission on the regulatory options identified in the staff report. These recommendations will be forwarded to the City Council for review and discussion at its meeting of March 18, 2013.

Attachments:

1. Plaza Retail Overlay Zone Business Inventory
2. Minutes of the Planning Commission meeting of December 12, 2012
3. Memo from Bret Sackett, Chief of Police, dated December 12, 2012
4. Draft Sonoma County Ordinance establishing standards for the service of alcoholic beverages
5. Policy Briefing on "Morphing" (Community Prevention Initiative)

PLAZA RETAIL OVERLAY ZONE (PROZ): Business Database (Ground Floor)

Updated: October 5, 2012

	ADDRESS	BUSINESS NAME	FORMULA?	BUSINESS TYPE	SUMMARY DATA:		
					Business type:	#	%
1	476 1st St E	Sebastiani Theatre	N	Culture/Entertainment	Retail	61	45.2%
2	551 Broadway	Sonoma Valley Museum of Art	N	Culture/Entertainment	Retail/Tasting Room combo	4	3.0%
3	110 W Spain	Sonoma Hotel	N	Lodging	Wine Tasting & Sales	15	11.1%
4	480 1st St E	Ledson Hotel & Harmony Lounge	N	Lodging	Tavern/Bar/Wine Bar	4	3.0%
5	405 1st W	El Dorado Hotel	N	Lodging	Lodging	4	3.0%
6	18 W Spain	Swiss Hotel (hotel)	N	Lodging	Restaurant/Food Service Retail	21	15.6%
7	405 1st St. W	El Dorado Kitchen	N	Restaurant/Food Service Retail	Services - Banking, Finance, Insur, RE	11	8.1%
8	18 W Spain	Swiss Hotel (restaurant)	N	Restaurant/Food Service Retail	Services - Personal	5	3.7%
9	531 Broadway	Top That Yogurt	N	Restaurant/Food Service Retail	Services - Other	6	4.4%
10	110 W Spain	Girl and the Fig	N	Restaurant/Food Service Retail	Culture/Entertainment	2	1.5%
11	8 Spain	Mary's Pizza Shack	YES	Restaurant/Food Service Retail	Vacant	2	1.5%
12	403 1st W	El Dorado Corner Café	N	Restaurant/Food Service Retail	TOTAL	135	100%
13	421 1st W	Sunflower Caffè Espresso & Wine Bar	N	Restaurant/Food Service Retail	By Formula Store category:		
14	487 1st W	Harvest Moon Café	N	Restaurant/Food Service Retail	Yes	5	3.7%
15	529 1st St W	The Red Grape	N	Restaurant/Food Service Retail	No	128	94.8%
16	522 Broadway	Restaurant Rudy Sonoma	N	Restaurant/Food Service Retail	Vacant	2	1.5%
17	101 E Napa St	Maya	N	Restaurant/Food Service Retail	TOTAL	135	100.0%
18	139 E Napa St	Rins Thai	N	Restaurant/Food Service Retail			
19	133 E Napa St	Della Santina's	N	Restaurant/Food Service Retail			
20	140 E Napa St	Café La Haye	N	Restaurant/Food Service Retail			
21	Place des Pyrenees	Murphy's Pub	N	Restaurant/Food Service Retail			
22	Place des Pyrenees	Taste of the Himalayas	N	Restaurant/Food Service Retail			
23	460 1st St East	Basque Boulangerie Café	N	Restaurant/Food Service Retail			
24	Mercato paseo	La Salette	N	Restaurant/Food Service Retail			
25	420 1st St E	Plaza Bistro	N	Restaurant/Food Service Retail			
26	408 1st St E	Ben and Jerry's	YES	Restaurant/Food Service Retail			
27	121 E Spain St	La Casa	N	Restaurant/Food Service Retail			
28	100 W Spain	SummerVine	N	Retail			
29	28 Spain	H Frank	N	Retail			
30	134 Church	Red Wolf Gallery	N	Retail			
31	38 Spain	Candlestick	N	Retail			
32	14 Spain	Fleuritique	N	Retail			
33	2 Spain	Sonoma Cheese Factory	N	Retail			
34	423 1st W	Baksheesh	N	Retail			
35	435 1st W	Sign of the Bear Kitchenware	N	Retail			
36	447 1st W	Fairmont Gallery	N	Retail			
37	457 1st W	Bella Vita	N	Retail			
38	453 1st W	Kaboodle	N	Retail			
39	461 1st W	The Loop	N	Retail			
40	475 1st W	Eraldi's Menswear & Shoes	N	Retail			
41	481-A 1st W	Large Leather	N	Retail			
42	491 1st W	Sonoma Silver Co.	N	Retail			
43	493 1st W	BRAM	N	Retail			
44	476 1st W	Sonoma Home	N	Retail			
45	103 W Napa St	Changing Seasons	N	Retail			
46	107 W Napa St	Harvest Home	N	Retail			

98	552 Broadway	Alain Pinel Real Estate	N	Services - Banking, Finance, Insur, RE
99	109 E Napa St	Coldwell Banker	N	Services - Banking, Finance, Insur, RE
100	27 E Napa St	Sothebys (several suites in Court Shops)	N	Services - Banking, Finance, Insur, RE
101	515 1st St E	Edward Jones	N	Services - Banking, Finance, Insur, RE
102	470 1st St East	Wine Country Group	N	Services - Banking, Finance, Insur, RE
103	428 1st St	Frank Howard Allen	N	Services - Banking, Finance, Insur, RE
104	521-B Broadway	The Collection Event Studio	N	Services - Other
105	520 Broadway	Sonoma Valley Bike Tours & Rentals	N	Services - Other
106	548 Broadway	Sonoma Shipping	N	Services - Other
107	525 1st St E	Sage Marketing/Odyssey Travel	N	Services - Other
108	466 1st St East	Thomas Haeuser Atty at Law	N	Services - Other
109	27 E Napa St	Rozanski Design	N	Services - Other
110	539 1st St W	Catalina's Skin & Body	N	Services - Personal
111	539 Broadway	Beautiful Nails salon	N	Services - Personal
112	542 Broadway	Allen's Hair House	N	Services - Personal
113	452 1st St E	Massage Envy	YES	Services - Personal
114	Mercato paseo	En-er-gy Fitness	N	Services - Personal
115	465 1st W	Steiner's Tavern	N	Tavern/Bar/Wine Bar
116	524 Broadway	Leased	N	Tavern/Bar/Wine Bar
117	127 E Napa St	Enoteca Della Santina	N	Tavern/Bar/Wine Bar
118	482 1st St E	Town Square	N	Tavern/Bar/Wine Bar
119	147 E Spain St	Vacancy (prev. Anne Appleman Florist)	N	VACANT
120	400 1st St E	Vacancy	N	VACANT
121	521 Broadway	Bump Wines **	N	Wine Tasting & Sales
122	380 1st W	WALT Wines	N	Wine Tasting & Sales
123	481 1st W	Adobe Road Winery Tasting Room	N	Wine Tasting & Sales
124	483 1st W	Charles Creek	N	Wine Tasting & Sales
125	11 E Napa St	Westwood Winery	N	Wine Tasting & Sales
126	Vine Alley paseo	Glen Lyon/Two Amigos Wine Tasting	N	Wine Tasting & Sales
127	Vine Alley paseo	Haywood Estate	N	Wine Tasting & Sales
128	Vine Alley paseo	Bryter Estates Wine Tasting	N	Wine Tasting & Sales
129	Vine Alley paseo	Envolve Wine Tasting	N	Wine Tasting & Sales
130	35 E Napa St	Sonoma Enoteca	N	Wine Tasting & Sales
131	111-B E Napa St	Kamen Estate Winery	N	Wine Tasting & Sales
132	141 E Napa St	Sojour Cellars	N	Wine Tasting & Sales
133	Mercato paseo	Erik James Tasting Room	N	Wine Tasting & Sales
134	412 1st St E	Sonoma Wine Shop	N	Wine Tasting & Sales
135	Vine Alley paseo	Sigh Sparkling Wine	N	Wine Tasting & Sales

* State parks and Mission properties are not included in the PROZ.

Joseph Hooker House property is in the PROZ but excluded from the inventory.

* Reflects change since last quarterly report

** In process; not yet open

Comm. Howarth confirmed that the building was built in 1997 and asked the applicant if there were any plans to address surface runoff from the site as part of the proposal, noting that there is an opportunity.

Vic Conforti, project architect, answered that the site is fully developed and already has a drainage design so they haven't considered further improvements in this regard.

Comm. Felder confirmed with the applicant that water use and wastewater generation would increase with the proposed change in use. He then confirmed with staff that the project would be subject to the requirement for a water demand analysis and will-serve letter from the City Engineer.

Comm. Edwards confirmed that the building currently has about 12 real estate offices inside and commented that the proposed hotel use would generate less traffic given the number of offices.

A discussion ensued on whether it would be appropriate for the Planning Commission to require drainage or groundwater recharge upgrades with the change in use.

Comm. Willers emphasized that the bigger issue is increased water use with conversion to hotel rooms and as a result, he would like the project to meet CAL Green requirements for water use/plumbing fixtures. Since the remodel project is exempt from CAL Green standards he suggested that the Planning Commission condition the approval to require compliance with CAL Green standards for water use/plumbing fixtures.

Planning Director Goodison suggested additional language to draft condition No. 6 to address Comm. Willers request.

Comm. Roberson supports adding the CAL Green provision.

Comm. Edwards pointed out that when people stay at a hotel they are not using water at home.

Comm. Roberson made a motion to approve the Use Permit with the amendment to condition No. 6 as suggested by staff. Comm. Willers seconded. The motion was unanimously approved, 5-0.

Item #5 –Discussion of Wine Tasting Facilities

Chair Felder welcomes all input and explains this is an informal format as a discussion item.

Planning Director Goodison and Police Chief Sackett presented staff's report.

Comm. Edwards confirms with Chief Sackett that the majority of DUI citations are given in the evening hours.

Comm. Roberson wants to streamline the process and feels the discussion is informative. He believes that density of testing facilities can be good in certain settings but not at the cost of diversity in a community.

Comm. Howarth says this extension of use is confirmed with the Police Department. The Type 42 license is commonly used for winery based venues. The 02 license is more restrictive since it does not allow serving beer.

Comm. Edwards agrees with Chief Sackett that some places are turning into “bar like” settings which was not the initial intended use when the permit was granted to the business.

Comm. Willers is of the opinion that wine tasting facilities are very different than other uses and that the use permit requirement should review compatibility and change of use. In his view, wine tasting is not general retail.

Chair Felder opened the public hearing.

Pat Pulvirenti, resident, would like the Planning Commission to consider reviewing new tasting room proposals with a Use Permit application.

Vic Conforti, Architect, feels that having more tasting rooms (competition) decreases overall sales.

Chair Felder closed the public hearing.

Comm. Roberson appreciates the Chief’s efforts in exploring the many options with Planning Director Goodison. He does not support any additional requirements for establishing a new business and therefore would not endorse a Use Permit.

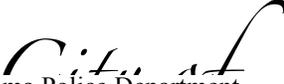
Comm. Edwards is of the opinion that wineries should not need another license to operate a secondary tasting room in Sonoma. He wants to maintain Sonoma’s reputation of being a diverse Town. However, he is interested in exploring further regulation on wine-tasting facilities that are not affiliated with wineries as these seem most prone to becoming bar-like environments. We would also like to see updated definitions in the Development Code for these uses and possibly standard conditions regulating hours and other issues.

Chair Felder disagrees about distinguishing between different business models and prefers the same standards apply to all types of businesses. He values the use of the Use Permit application to avoid potential problems and alleviate the concern of wine tasting establishments morphing into something else.

It was suggested that EDAC (Economic Development Advisory Committee) be consulted for additional input, with direction to staff to return to the Planning Commission with additional analysis and options once this had been accomplished.

Issues Update:

1. Peet’s Coffee and Tea was unanimously approved 5-0 by the City Council on 11-19-12.
2. The Planning Commissioners Conference was well attended (five Commissioners & Planning Director). Chair Felder thanked Cristina for organizing.
3. A Joint Session with the Planning Commission and City Council will be scheduled sometime in 2013.
4. Assistant City Manager Carol Giovanatto is the newly appointed City Manager.
5. There will be a new recruitment for a Public Works Director/City Engineer. In the interim, Matt Winkleman of GHD, is the City Engineer.


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Date: December 10, 2012
To: David Goodison, Planning Director
From: Bret Sackett, Chief of Police
RE: Wine Tasting Facilities

Alcohol is an important contributor to the unique culture and vitality of Sonoma. However, alcohol can also impact the health and safety of our youth and adults – and play a role in a range of community problems, such as driving under the influence, underage drinking and alcohol related crimes. A recent survey of DUI drivers from Sonoma revealed that 56% obtained their final drink at an ABC licensed establishment, while youth focus groups routinely cite that alcohol is “fairly easy” to obtain from ABC licensed establishments.

According to criteria established by the California Department of Alcoholic Beverage Control, the City of Sonoma has a higher number of off-sale alcohol establishments than recommended (greater than 1 per 2,500 population). As such, each new license application for a retail outlet – such as liquor stores, convenience stores, and bars – require the local jurisdiction to make a determination that the new alcohol license will serve a “public convenience or necessity.” In Sonoma, the police chief makes that determination, but denials can be appealed to the City Council.

In order to obtain such a license, the applicant must obtain a “Letter of Public Convenience or Necessity” from the police chief. Unfortunately, the term “Public Convenience or Necessity” is not clearly defined by ABC, but the police chief considers some of the following criteria when making such a finding:

- The proposed use will not be detrimental to the character of immediate neighborhood
- Proximity to sensitive land use issues
- There are no conflicts with zoning regulations
- The economic benefit outweighs the negative impacts to the community
- The license will provide a needed service not currently being met in the community
- Unique and unusual circumstances to justify a new retail alcohol outlet when there are already similar alcohol uses existing nearby (this is much more difficult to establish)

While ABC has a wide variety of license types, it does not offer one specific to “wine tasting.” ABC allows a winery, which operates with Type 02 license, to operate an off-site tasting room under their existing Type 02 license. However, a wine tasting business that is not associated with a specific winery and wishes to provide tastings from multiple wineries – and subsequent purchase for on or off site consumption – must obtain a Type 42 license. It’s important to note that a Type 42 license authorizes the sale of beer and wine for consumption on or off the premise and is not limited to just “wine tasting.” In essence, a Type 42 license authorizes a business to operate like a bar or tavern, although they may call themselves a “tasting facility.”

The police chief would like to make the Planning Commission aware of the potential for a wine tasting business to morph into a “wine and beer bar” absent other regulatory criteria. In essence, we cannot rely on the ABC license to regulate wine tasting businesses without other local zoning regulations. In addition, the police chief respectfully requests the Planning Commission’s opinion as to what constitutes “Public Convenience or Necessity”, so he can take those opinions into consideration as he reviews additional requests for new ABC licenses.

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING CHAPTER 26 OF THE SONOMA COUNTY CODE TO ESTABLISH PERMIT REQUIREMENTS AND STANDARDS FOR ALCOHOLIC BEVERAGE RETAIL SALES

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION I. Findings

The Board finds and declares that the adoption of this Ordinance is necessary to implement the Sonoma County 2020 General Plan and make changes, clarifications, and minor corrections related to the sales of alcoholic beverages at outlets throughout the County. The Board hereby makes the following findings to support the adoption of this ordinance:

1. The proposed ordinance helps implement General Plan Policy PF-3d to avoid negative impacts to youth serving facilities from the sales and serving of alcohol in the neighborhood of the alcoholic beverage sales outlets.
2. The proposal to amend the current Zoning Ordinance will serve to reduce sales to minors, drunk driving, littering, loitering, drunkenness, criminal activity, vandalism, and violence associated with excessive alcohol consumption related to easy availability and access to alcoholic beverages; and
3. There continues to be expressed support from community coalitions and residents representing both municipal and unincorporated jurisdictions, to broaden the scope of the current Ordinance in order to mirror ordinances in other parts of the County and create countywide consistency. In the six jurisdictions with alcohol Conditional Use Permits, all include operating standards for both on-premise and off-premise alcohol establishments. In addition, several of the six jurisdictions also include provisions in their ordinances that place nuisance abatement standards on all alcohol outlets existing before the adoption of their ordinance; and
4. Adoption of the proposed amendment to the Zoning Ordinance will help prevent new retail businesses from locating in the unincorporated areas of the County to avoid more stringent regulations on the sales and service of alcoholic beverages in surrounding municipalities.
5. Academic research has established a link between the number, types and concentration of alcohol beverage sales outlets in a given area or neighborhood, and higher levels of alcohol consumption. Youth surveys indicate that Sonoma County youth believe that alcohol continues to be easy to get. Seventy eight percent (78%) of Sonoma County 11th graders believe alcohol is fairly easy or very easy to get (California Healthy Kids Survey 2008). And,

nearly half of the students participating in focus groups in both the West County and Sonoma Valley report that alcohol is easy to get from stores.

6. Research also shows that over-concentration of alcohol establishments in a community can lead to high-levels of consumption which contribute to increased rates of crime, violence, and nuisance activities that threaten the health, safety, and general well-being of the public. In 2009, the Sonoma County Sheriff's Office documented 9,563 alcohol-related crime reports requiring law enforcement response. Twenty-seven (27%) of those crimes occurred in unincorporated areas of the county close to where there exists higher concentrations of both on-premise and off-premise alcohol outlets.

SECTION II. Chapter 26 of the Sonoma County Code is amended as follows:

(a) Article 02, In General, Section 26-02-140, Definitions, is amended to add the following definitions to read:

Alcoholic beverage sales means the sale or serving of alcoholic beverages either on-premise or off premise, including tasting rooms that serve alcoholic beverages.

Alcoholic beverage sales, off-premise means the sale of alcoholic beverages at a liquor store, convenience store, market, tasting room, or other retail outlet or business that sells alcoholic beverages for off-premise consumption, including, but not limited to, any business that has obtained or intends to obtain a California Department of Alcoholic Beverage Control license such as Type 20 or 21 or Duplicate Type 02, or similar license types that may added from time to time.

Alcoholic beverage sales, on-premise means the sale of alcohol beverages at a bar, restaurant, night club, lounge, or any other public venue or outlet, which sells or serves alcoholic beverages for consumption on the premises and which is applying for or has obtained a California Department of Alcoholic Beverage Control license type such as 40, 41, 42, 47, 48, 51, 61, 68, and/or 75, or similar license types that may be added from time to time.

Alcoholic beverage sales outlet means a place where alcoholic beverages are served or sold for consumption either on-premise or off premise, including tasting rooms that serve alcoholic beverages.

Alcoholic beverage sales, responsible beverage service training or "**RBS training**" means an educational course in responsible beverage sales and service methods and practices certified by the California Department of Alcoholic Beverage Control, or a program such as Licensee Education on Alcohol and Drugs conducted by the California Department of Alcoholic Beverage Control, which provides a certificate upon completion.

Restaurant, Full Service means a restaurant in which the primary purpose of the operation is food service and which has all of the following characteristics:

- a. Premises contain a commercial kitchen licensed by the County Environmental Health Division; provide the necessary cookware, tables, seating, place settings, and condiment dispensers with which to serve meals to the public; and display and maintain a printed menu and/or a menu board.
- b. Serves at least two meals a day (lunch and breakfast, or lunch and dinner) to guests for compensation; serves meals to guests at least seventy percent (70%) of the time the business is open; and two-thirds of the items offered on the menu for a particular meal (i.e. breakfast or lunch or dinner) are available at any given time the meal is served.
- c. Sixty-seven percent (67%) or more of gross receipts are from the sale of food.

The sale or service of sandwiches, appetizers, pastries, or snack foods (whether made elsewhere and heated up on the premises or prepared onsite) shall not constitute a full-service restaurant.

(d) In Article 02, In General, Section 26-02-140, Definitions, is amended to delete in their entirety the definitions of “**Alcoholic beverage retail establishment,**” “**Large alcoholic beverage retail establishment,**” and “**Small alcoholic beverage retail establishment.**”

(e) In Article 30, C1 Neighborhood Commercial District, Section 26-30-010, Permitted Uses, is amended to read:

- (a) Neighborhood retail businesses which supply household commodities on the premises such as groceries, meats, dairy products, baked goods or other foods, drugs, notions or hardware; ~~large alcoholic beverage retail establishments;~~ personal service establishments which perform services on the premises for persons residing in adjacent residential areas such as shoe repair, dry cleaning shops, tailor shops, beauty parlors, barber shops and the like. All retail sales and service uses shall be conducted entirely within a building;

(f) In Article 30, C1 Neighborhood Commercial District, subsections (e) and (u) of Section 26-30-020, Uses Permitted with a Use Permit, are amended to read:

- (e) ~~Restaurants serving alcohol, Takeout food; bars, cocktail lounges~~
- (u) ~~Small alcoholic beverage retail establishments~~ Alcoholic beverage sales outlets, subject to the standards in Section 26-88-195;

(g) In Article 32, C2 Retail Business and Service District, subsections (a) and (c) of Section 26-32-010, Permitted Uses, are amended to read:

- (a) Retail stores supplying commodities for residents of the county such as bakeries, ice cream stores, grocery stores, ~~large alcoholic beverage retail establishments,~~ newsstands, furniture, hardware and appliance stores, department stores, stationery stores, sporting goods stores, pet shops, florist shops, retail nurseries,

automobile accessory stores, and the like.

(c) ~~Restaurants; serving alcohol, bars, cocktail lounges;~~

(h) In Article 32, C2 Retail Business and Service District, subsections (h) and (v) of Section 26-32-020, Uses Permitted with a Use Permit, are amended to read:

(h) Takeout food, live entertainment, amplified ~~live music~~ sound;

(v) ~~Small alcoholic beverage retail establishments;~~ alcoholic beverage sales outlets, subject to the standards in Section 26-88-195;

(i) In Article 34, C3 General Commercial District, subsections (cc) and (ff) of Section 26-34-020, Uses Permitted with a Use Permit, are amended to read:

(cc) Amplified ~~live music~~ sound or , ~~Bars, cocktail lounges;~~ live entertainment,

(ff) ~~Small alcoholic beverage retail establishments~~ Alcoholic beverage sales outlets, subject to the standards in Section 26-88-195;

(j) In Article 36, LC Limited Commercial District, subsection (a) of Section 26-36-010, Permitted Uses, is amended to read:

(a) Neighborhood retail businesses which supply household commodities on the premises such as groceries, meats, dairy products, baked goods or other foods, drugs, notions or hardware; ~~large alcoholic beverage retail establishments;~~ personal service establishments which perform services on the premises for persons residing in adjacent residential areas such as shoe repair, dry cleaning shops, tailor shops, beauty parlors, barber shops and the like. All retail sales and service uses shall be conducted entirely within a building;

(k) In Article 36, LC Limited Commercial District, subsections (e) and (ff) of Section 26-36-020, Uses Permitted with a Use Permit, are amended to read:

(e) ~~Restaurants serving alcohol, t~~ Takeout food; ~~bars, cocktail lounges;~~ live entertainment, amplified ~~music~~ sound;

(ff) ~~Small alcoholic beverage retail establishments~~ Alcoholic beverage sales outlets, subject to the standards in Section 26-88-195;

(l) In Article 42, K Recreation and Visitor-Serving Commercial District, subsection (v) of Section 26-42-020, Uses Permitted with a Use Permit, is amended, and subsections (cc) and (dd) are added, to read:

(v) Amplified ~~live music~~ sound, live entertainment;

- (cc) Alcoholic beverage sales, subject to the standards in Section 26-88-195;
- (dd) Other nonresidential uses which in the opinion of the planning director are of a similar and compatible nature to those uses described in this section:

(m) **In Article 88, General Use and Bulk Exceptions - Building Lines, Section 26-88-195,** Alcoholic Beverage Retail Establishments, is deleted in its entirety and replaced with the following to read:

Sec. 26-88-195. Alcoholic Beverage Sales Outlets.

This section establishes standards for all alcoholic beverage sales outlets engaged in alcoholic beverage sales, where allowed by the base zoning district.

A. Permit Requirement and Findings. All alcoholic beverage sales shall require a use permit. In granting a use permit for an alcoholic beverage sale and in addition to making the findings required for use permit approval by section 26-92-080, the decision maker shall consider the following:

1. The number of alcohol licenses per capita within a one-half mile radius of the premises as compared to the county-wide average.
2. The numbers of law enforcement calls for service, crimes, and arrests at the premises, in the immediately surrounding neighborhood or business district, and within a one-half mile radius of the premises as compared to the county-wide average.
3. The density distribution and type of alcohol beverage sales outlets within a one-half-mile radius.
4. Whether the site plan and floor plan for the premises incorporate design features to assist in reducing alcohol-related problems. These features may include, but are not limited to, openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage objectionable activities.
5. The proposed hours of operation.
6. Whether the operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding area.

B. Operating Standards. All alcoholic beverage sales outlets shall comply with the following operating standards. In granting a use permit for alcoholic beverage sales, the decision maker may impose additional operating standards as conditions of approval. Existing legally established alcoholic beverage sales outlets shall be subject to the Operating Standards of this Subsection B.

1. **Staff training.** All owners/operators, managers, and employees who sell

or serve alcoholic beverages at the alcoholic beverage sales outlet shall complete responsible beverage service (RBS) training ~~a certified training program in responsible methods and skills for selling alcoholic beverages~~ within 90 days from issuance of a certificate of occupancy, or if no building permit is required, within 90 days of issuance of the use permit, and every third year thereafter. The ~~certified program~~ RBS training shall meet the standards of the California Department of Alcoholic Beverage Control or other certifying/licensing body which the state may designate. New owners/operators, managers, and employees who sell or serve alcoholic beverages shall complete the training course within 30 days of the date of ownership or employment, and every third year thereafter. Records of successful completion for each owner, manager, and employee shall be maintained on the premises and shall be presented upon request by a representative of the county.

2. Trash, litter, graffiti.

- a. At least twice a week, the operator of the business shall remove all trash, litter, and debris from the sidewalks or pedestrian pathways adjoining the premises plus 10 feet beyond property lines as well as any parking lots under the control of the operator.
- b. The operator of the business shall install and maintain a minimum of one permanent, non-flammable trash container with at least a sixty (60)-gallon capacity on the exterior of the premises.
- c. The operator of the business shall remove all graffiti from the premises and parking lots under the control of the operator within 72 hours of its application.

3. Customer and site visitor management. The operator of the alcoholic beverage sales outlet business shall take all reasonable steps, including contacting law enforcement in a timely manner, to prevent customers or other persons from engaging in objectionable activities on the premises, parking areas under the control of the operator, highways, roads, streets, sidewalks, lanes, alleys, and other public areas surrounding the premises, and adjacent properties during business hours.

4. Compliance with other requirements.

- a. The operator of the alcoholic beverage sales outlet business shall comply with all local, state, and federal laws, regulations, or orders, including those of the California Department of Alcoholic Beverage Control, as well as any conditions imposed by permits issued in compliance with those laws, regulations, or orders.
- b. The operator of the alcoholic beverage sales outlet business shall

comply with all provisions of this code and conditions imposed by county-issued permits.

5. **Signs, postings and security.** This subsection for signs, posting and security shall not apply to tasting rooms located in an agricultural or resource zoning district.
 - a. Premises identification shall comply with Article V, Division C of Chapter 13 of this code and the county's adopted road naming and addressing procedures and standards.
 - b. A copy of the operating standards and any conditions of approval for the use permit shall be posted in a conspicuous and unobstructed place visible from the entrance of the business or at the cash register for public review. The operating standards and/or use permit conditions shall be kept on the premises and shall be presented to any peace officer or any authorized county official upon request.
 - c. Signs shall be posted on the inside of the premises stating that drinking in public or outside the premises is prohibited, unless allowed by use permit.
 - d. An 18 inch x 24 inch sign prohibiting loitering shall be posted on the exterior of the business and be visible from the parking lot.
 - e. A monitored robbery alarm system shall be installed and continually maintained in good working condition on the premises.
6. **Annual Fee.** An annual monitoring fee may be established by the Board of Supervisors to cover the costs of administration, training, monitoring and enforcement. Each operator of an alcoholic beverage sales outlet, whether on-premise or off-premise shall pay the annual fee.

C. Additional Standards for On-premise Alcoholic Beverage Sales Outlets. In addition to the standards set forth in Subsection B above, on-premise alcoholic beverage sales are subject to the following standards, requirements, and limitations, where allowed by the base zoning district. The standards of this Subsection C shall not apply to tasting rooms.

1. **Location requirement.** An on-premise alcoholic beverage sales outlet shall be separated by a minimum of ~~500~~ 4,000 feet from all public or private schools, public park and recreation facilities, day care centers, places of religious assembly, and other off-premise and on-premise alcoholic beverage sales outlets.

An exception to this provision may be allowed for an on-premise alcoholic beverage sales outlet when the decision maker finds that the alcoholic beverage sales outlet is a full service restaurant as defined in Section 26-02-140. To enable such a finding, business receipts or records shall be made available within seven business days of an official request from the county.

2. **Limitations on sales and promotional activities.**

- a. The promotion of activities and games geared towards heavy alcohol use or over consumption are prohibited. Such activities and games include but are not limited to, beer pong, bar golf, case race, beat the bartender, boat races, and beer relay.
- b. “Happy hours” offering **discounts on drinks** shall be limited to the hours of 4:00 p.m. – 7:00 p.m. daily and food shall be made available.
- c. Alcoholic beverage sales to restaurant patrons shall be terminated within two hours after meal service has ceased.

D. Additional Standards for Off-premise Alcoholic Beverage Sales In addition to the standards set forth in Subsection B above, off-premise alcoholic beverage sales are subject to the following standards, requirements, and limitations, where allowed by the base zoning district. The standards of this Subsection D shall not apply to tasting rooms.

1. **Location requirement.** An off-premise alcoholic beverage sales outlet shall be separated by a minimum of ~~1,000~~ **500** feet from all public or private schools; publicly-owned park and recreation facilities; day care centers; places of religious assembly; and other alcoholic beverage sales outlets that are not full service restaurants as defined herein.

- a. An exception to this provision may be allowed for alcoholic beverages sales outlets outside an urban service area as designated in the General Plan when the decision maker makes both of the following findings:
 - (1) The proposed use is located in an area where the number of calls for service, crimes, and arrests within a one-half mile radius of the premises is less than the county-wide average; and
 - (2) There is adequate separation from the other uses specified in Subsection D.1 above to deter loitering and exposure to alcohol sales.
- b. An exception to this provision also may be allowed for off-premise alcoholic beverage sales outlets with a floor area exceeding 10,000 square feet.

2. **Staffing, surveillance, and security**

- a. Signs and displays shall not obstruct the sales counter, cash register, and customers from view from the exterior of the premises at retail alcoholic beverages sales outlets smaller than 10,000 square feet in size.
- b. The operator of the off-premise alcoholic beverage sales outlet business shall install and continually maintain in working order, interior and exterior surveillance cameras and monitors. At a minimum, the external cameras shall monitor the entrance to the premises and vicinity of at least 20 feet beyond the entrance to the premises. At a minimum, the interior camera shall monitor the cash register area. The tapes or digital recording medium from these cameras shall be retained for at least 30 days from the date of recording before destruction or reuse. The tapes or digital recording medium shall be made available to the Sheriff's Department, or any other laws enforcement agency, upon request. An exception to the requirement for exterior surveillance cameras and monitors may be allowed for businesses outside an urban service area as designated in the General Plan when the decision maker makes both of the following findings:
 - (1) The proposed operation is located in an area where the number of calls for service, crimes, and within a one-half mile radius of the premises is less than the county-wide average; and
 - (2) There is adequate visibility of the exterior of the premises from the area of the cash register.
- c. At off-premise alcoholic beverages sales outlets smaller than 10,000 square feet in size, restrooms on the premises shall remain locked and under the control of the cashier. The premises shall be staffed with at least one person during hours of operation who shall not be responsible for dispensing fuel or auto servicing.

E. Grounds for Modification or Revocation. In addition to the grounds in Section 26-92-120, the decision maker may require modification or revocation of use permits for any permitted alcoholic beverage sales outlets if the decision maker finds that the use is operated or maintained in a manner that:

- 1. Adversely affects the health, peace, or safety of persons living or working in the surrounding area;
- 2. Contributes to a public nuisance;

3. Has resulted in repeated objectionable activities;
4. Violates any provision of this code or condition imposed by a county-issued permit, or violates any provision of any other local, state, or federal law, regulation, or order, including those of the California Department of Alcoholic Beverage Control, or violates any condition imposed by permits issued in compliance with those laws, regulations, or orders; or
5. Is contrary to the conditions of approval of the use permit.

F. Existing Alcoholic Beverage Sales Outlets. Alcoholic beverage sales outlets that were legally operating prior to the adoption of this section may continue to operate without obtaining a use permit unless the use is expanded or the intensity of the use is changed, provided that the use conforms to the performance standards of this section.

1. Performance standards for existing alcoholic beverage sales outlets.

In addition to adherence to the operating standards of Subsection B of this section, all alcoholic beverage sales outlets shall take all reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and the areas surrounding the alcoholic beverage sales outlet and adjacent properties under the control of the subject alcoholic beverage sales outlet. Reasonable steps shall include calling law enforcement in a timely manner, continually maintaining preventive design features, and requesting those engaging in such activities to cease those activities, unless personal safety would be threatened in making that request. Failure to correct these conditions may result in revocation of the existing status and requiring application for a new use permit in the manner provided by this Chapter. Such conditions include, but are not limited to:

- a. Disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sexual harassment or sexual battery, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd sexual conduct in public, or police detentions and arrests.
- b. Violations to any applicable provision of any other city, county, state, or federal regulation, ordinance, or statute including but not limited to sale or service of alcohol to minors, service of intoxicated patrons, failure to adhere to state ABC license conditions or other permit restrictions.

2. Changes to an existing alcoholic beverage sales outlet. If any of the

following changes are made to an existing alcoholic beverage sales outlet, a use permit for alcoholic beverage sales shall first be obtained.

- a. The alcoholic beverage sales outlet's liquor license is suspended for more than 30 days or revoked, whether enforcement action is stayed or not, by the California Department of Alcoholic Beverage Control.
- b. The alcoholic beverage sales outlet, abandons, closes, quits or permanently surrenders its licensed premises.
- c. Any change in the character of the use or the premises.
- d. Any new construction, renovation, or remodeling that increases the overall physical size of the business, i.e. additional square footage for an office or cooler.
- e. Any change to the use or premises of the alcoholic beverage sales outlet that causes the licensee to make a new application to the California Department of Alcoholic Beverage Control.

SECTION III. Notification to Alcoholic Beverage Sales Outlets. Within sixty (60) days of the date the ordinance takes effect the Permit and Resource Management Department of the County of Sonoma shall notify the owner/operator of each alcoholic beverage outlet within County jurisdiction of the operating requirements under the provisions of this code.

SECTION IV. The Board of Supervisors finds and determines that this ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines as it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment. This finding and determination is based on an environmental determination by the Permit and Resource Management Department. The Director of the Permit and Resource Management Department is directed to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

SECTION V. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION VI. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, passed and adopted this ____ day of _____, 2012, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

BROWN _____ **RABBITT** _____ **MCGUIRE** _____ **CARRILLO** _____ **ZANE** _____

AYES _____ **NOES** _____ **ABSTAIN** _____ **ABSENT**

WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Veronica A Ferguson,
Clerk of the Board of
Supervisors



COMMUNITY PREVENTION INITIATIVE (CPI)

POLICY BRIEF



Restaurants that “Morph” into Bars and Nightclubs in California Communities: What’s the Problem and What Can Be Done About It?



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October 2012



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This publication was produced for the Community Prevention Initiative (CPI), funded by the California Department of Alcohol and Drug Programs and administered by CARS.

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Restaurants that “Morph” into Bars and Nightclubs in California Communities: What’s the Problem and What Can Be Done About It?

SETTING THE SCENE: AN INSIDE LOOK AT MORPHING IN SAN LUIS OBISPO, CA.



At about 10:00 pm, downtown San Luis Obispo (SLO) changes dramatically from its daytime uses—shopping, tourism, dining, city government, professional offices—to a nighttime bar scene of large drunken crowds surging between a dozen or so establishments in a six-block area. A lively music scene and drink specials encourage the crowd—mostly between the ages of 18 and 25, many of them Cal Poly students—to stay longer and drink more. Some have “pre-loaded” or had drinks before coming downtown. ID checking is difficult with noisy and impatient crowds, and many patrons continue to be served despite their apparent drunkenness. At 2:00 am closing time, patrons from these establishments transition to the street, many of them inebriated and some falling-down drunk. (Figs. 1-6)ⁱ

The scene described here is a pressing issue in cities across California. According to research by CLEW Associates, the problems stem primarily from restaurants that shift or “morph” their main operations from food consumption during the day to alcohol sales at night. According to the Chief of Police for SLO, for many years this scene went on night after night, intensifying on weekends. After years of allocating police resources aimed at problematic intoxicated patrons, city leadership embarked on a planning process directed toward working with restaurant owners and managers to reduce these problems through land-use planning and zoning laws in combination with law enforcement. SLO now offers a model for other cities seeking to mitigate these problems using local tools readily available to all California municipalities.¹

While the need for public attention to problems with morphing may not be immediately apparent, tracking of police logs and close monitoring of these events illuminate the negative impacts on public safety and drains on community/municipal resources. In SLO, a study of annual police calls-for-service revealed that of nearly 1,000 police incidents occurring at the city’s 85 on-sale outlets, three-fifths of the incidents (nearly 600) occurred at just 10 Downtown establishments. According to the Chief of Police, four police officers were assigned to manage these late-night crowds. The officers contended with under-age drinkers, fights, unwanted sexual advances among patrons, violence, property damage, disturbances to neighbors, and DUIs. The cost for extra police support was borne by the city, not by establishments where the problems originated.

When morphing is concentrated and unregulated, the consequences run deep. Individual drinkers and their families, bystanders and neighbors all feel the impact. Treatment for medical emergencies and harm falls on health providers and on public health services. Costs of property damage fall on neighboring property owners and insurance companies. The legal and economic aftermath falls on the judicial system and on employers.

This Policy Brief looks at the issue of restaurant morphing in depth. What is morphing and how does it lead to problems? Where does morphing occur? How did morphing begin and how does it spread? Who is responsible for preventing and reducing problems related to morphing? What actions are being taken by the California Department of Alcoholic Beverage Control (ABC) and local communities to prevent and reduce (mitigate) these problems? What more can be done? A case example explores one city’s efforts to develop an effective preventive approach.

¹ Comments and images presented by Chief Deborah Linden, San Luis Obispo Police Dept, at the Alcohol Policy XV Conference held in Washington, DC on December 7, 2010: Session C-28 *How California restaurants morph into bars and what the state ABC and cities are doing about it.*



What is morphing and how does it contribute to problem behaviors and unlawful practices?

In California, far more drinking occurs at establishments licensed by the Alcoholic Beverage Control (ABC) as “restaurants” than at those licensed as “bars.” Significant problems occur at some restaurants that serve meals during the day, then morph into bar/nightclub operations at night. Most restaurants make this shift, which is permitted by ABC regulations, without creating visible problems. However, a small number of outlets licensed as “restaurants” generate high levels of police events. Research shows that about ten percent of restaurants in a given community

create about 50 to 60 percent of total police events out of all restaurants in that community, mostly between 10:00 pm and 2:00 am (ABC mandatory closing hours for alcohol sales).²

According to analysis of police events and on-site observations³ of bars and restaurants, problematic morphing occurs especially when patrons engage in high levels of drinking and drunkenness in the context of large crowds and/or an overcrowded premise. Excessive drinking and drunkenness lead to noise, fights and confrontational behavior, unwanted sexual advances, and other behavior. High levels of drinking in highly crowded conditions are especially difficult to control and are likely to disturb neighbors and damage nearby property. Venues that include dancing, live DJs and on-stage entertainment may be especially susceptible. Taken together these conditions pose major challenges for even the most capable management and most diligent oversight agencies.

Where does morphing occur?

A recent survey of Alcoholic Beverage Control (ABC) district offices⁴ revealed problems associated with morphing to be pervasive throughout the state. District office respondents confirmed studies of local police events showing that a small number of outlets create a disproportionately large number of police events in each local jurisdiction.⁵ Respondents reported that morphing has been a troublesome part of restaurant operations for many years in all regions of the state, in large and small cities, in suburbs, and in rural areas. Some respondents reported that morphing has remained relatively steady over the past several years while others said it has been increasing.

Studies using local police data provide a more prescriptive view, defining problematic morphing as more likely to occur in high-density locations. Most often these locations are downtown entertainment districts or suburban shopping malls, where multiple restaurant-bar establishments are clustered in a relatively confined area. Some of these areas catch on as late-night destinations that attract patrons from other cities. Marketing of special promotions and the use of social networking through electronic media attract large crowds. Restaurants offering entertainment venues near large college campuses and in “hospitality” zones attract young people from out of town along with nearby college students and local youth.⁶

2 F. D. Wittman, “Lessons from Three Orange County Cities: Municipal Responses to Rapid Growth of Problems at On-Sale Retail Alcohol Outlets,” California Prevention Collaborative Annual Meeting, Napa, California, March 8-10, 2009. Prepared under Orange County Health Care Agency Contract MA-042-10010415 to CLEW Associates, Berkeley, California

3 K. Graham and H. Morel, *Raising the Bar: Preventing aggression in and around bars, pubs, and clubs*. Willan Publishing, Portland, Oregon, 2008.

4 F.D. Wittman and F. Latcham, *Survey Report and Findings: ABC District Office Experiences with Restaurants that Morph into Bars and Nightclubs*. Prepared for the Center for Applied Research Solutions, Sacramento, under contract to the California Dept of Alcohol and Drug Programs. Prepared by CLEW Associates, Berkeley, California. July 6, 2011.

5 F.D. Wittman and J. Harding, *ASIPS/GIS Community Tour reports prepared for the Orange County Health Care Agency ADEPT (Alcohol Drug Education Prevention and Training) by CLEW Associates, Berkeley, California, for three cities:*

City of Fullerton (CY 2007-2010); City of Newport Beach (CY 2008-2010); City of Garden Grove (CY 2007-2010).

6 Comments by Police Chief, San Luis Obispo PD, during presentation to San Luis Obispo City Council October 20, 2009; and at meeting on May 23, 2011, hosted by Fullerton PD, to review ASIPS/GIS Community Tour data.

Suburban communities that look to restaurants as key downtown development projects often experience an unexpected and rapid rise in the density of bar-restaurants and nightclubs, rather than or in addition to traditional restaurants, in the development area. This increase is accompanied by a spike in late-night police events. Cities that offer “destination” entertainment and tourism districts, such as San Luis Obispo, Newport Beach, San Francisco, and Santa Barbara, attract large numbers of people that require a constant higher level of police supervision to protect public safety, manage large crowds and maintain public order.⁷

How has morphing grown to become a problem?

How has the shift from restaurant service during the day to night-time bar/nightclub activity become troublesome in so many California communities? Three sets of circumstances have evolved over the past fifty years that help explain the rise of problematic morphing.

(1) The restaurant industry has evolved from traditional dining, emphasizing meal service that includes alcohol only as an incidental part of the meal, to focus on a “hospitality” experience that blends dining, drinking and entertainment in an expanding environment of high-density community development and social networking.

(2) The California State ABC is struggling to keep pace with restaurant industry growth and oversight for the industry’s evolution toward more drinking and entertainment. State licensing codes are out of date, staffing levels for monitoring and enforcement have decreased, and training resources have declined. These circumstances are putting pressure on local jurisdictions to participate more actively in oversight functions.

(3) Despite the industry shift and decline of State resources, most local jurisdictions have not stepped up their oversight at the community level. Cities and counties continue to rely on reactive law enforcement to address problems rather than make full use of their substantial land-use and zoning powers, which are designed to support preventive oversight of retail alcohol outlets (and all other land uses). However, a handful of municipalities are making promising, innovative use of local planning and zoning powers to address problems with morphing.

1. EVOLUTION OF THE RESTAURANT/HOSPITALITY INDUSTRY INCREASES FOCUS ON ALCOHOL SALES



The restaurant industry has evolved from locally-owned businesses to include regional and national chain operations. With this change, restaurants have expanded their functions to include socializing, sports, and entertainment. Restaurants are a popular venue for promotions by the alcoholic beverage / hospitality industry. They are also principal components of city development and redevelopment plans. Alcohol sales represent a profitable source of revenue in an increasingly competitive environment both for the restaurateurs and the cities that authorize them.

From mom-and-pop restaurant to hospitality enterprise. In the mid-1950s the restaurant industry began expanding from an enterprise comprised solely of locally-owned establishments serving a local clientele to include national and regional chains of restaurants serving a mass market under central corporate direction. Several chains have chosen to emphasize drinking and include entertainment and special events/community activities. For example, the Red Robin grew from a single tavern near the University of Washington in the 1940s to a multi-city chain brand in 1980 offering “gourmet burger and spirits.” The chain grew to 150 restaurants nationwide by the year 2000. In addition to food, the chain offers an elaborate menu of alcoholic beverages. Other free-standing national chains such as Chili’s, Applebee’s, Red Lobster, and Dave & Buster’s promote mixed drinks and offer a traditional bar built as part of the restaurant. These chains contrast with Denny’s (a small percentage of the chain’s outlets serve alcohol), Sizzler (which serves only beer and wine), and fast-food restaurants such as McDonalds, which do not serve alcohol.

⁷ The dedication of four police officers in San Luis Obispo to patrol of about a dozen late-night on-sales establishments in a high-concentration area exemplifies elevated police staffing levels required for entertainment zones in “destination” cities.

Beverages sales of all types, especially spirits-based mixed drinks, offer proven revenue growth and high profit margins as reported by top restaurant chains. With fewer people eating out in this latest recession, many restaurant chains looked to increased alcohol sales by bolstering nighttime activities, extending hours and marketing an “eatertainment” experience. Top restaurant chains have reported that late-night alcoholic beverages result in the largest increase in overall sales. For example, Applebee’s chains reported the highest margin of alcohol sales, 14%, in its history for 2010 (DineEquity Inc.). An Applebee’s franchise representative reported that

“Our late night initiative has been really effective. It is centered on driving traffic from 9 p.m. to close. All [of our] Applebee’s are staying open to midnight or later now. We’ve revamped some of our happy-hour offerings, and we’ve introduced a higher level of activity, with louder music and lower lights. Really refocusing on being a bar” (Ruggles, 2011).^{8,9}

Proliferation of bar-restaurants and entertainment venues is part of a larger pattern of urban and suburban development to accommodate higher population densities, pedestrian living, and urban excitement throughout the US over the last two decades. Large cities rebuild downtown and core neighborhoods while suburban communities develop multi-use town centers and transit villages that include retail, residential, and entertainment activities along with day-time office uses. The hospitality industry and alcoholic beverage industry seek to include bars and restaurants as a major component of this development activity, working with local restaurant owners and real estate developers to advocate their joint interests. The Responsible Hospitality Institute (RHI), for example, funded in part by the alcoholic beverage industry, has a variety of programs and training sessions to support inclusion of recreational drinking and entertainment by “responsible” establishments in community development plans that create “vibrant” night-time economies in special entertainment districts and hospitality zones.¹⁰

How the State of California distinguishes between “bars” and “restaurants.”

The California Alcoholic Beverage Control Department (ABC) has licensing categories for “restaurants” and “bars.” Despite these separate categories, the ABC licensing system allows “restaurants” – places devoted mainly to serving meals – to also function as “bars” – places devoted mainly to drinking. California ABC regulations include five main license categories that distinguish bars from restaurants based on meal service and the type of alcohol served. (See statewide frequencies in Table 1). *Restaurants* (where meals are served) are shown as Type 41 (Beer & Wine Restaurant License) or Type 47 (beer, wine and spirits, called a General Restaurant License). Note there are about twice as many Type 41 Beer & Wine licenses (22,500) as Type 47 General licenses (13,000). *Bars* (where meals are not served) are shown as Type 48 licenses. (The ABC technical term for a “bar” is “public premises.”) There are about five times as many General license restaurants (Type 47) as General license bars (Type 48). Type 40 (Beer Bars) and Type 42 (Beer & Wine Bars) are shown here to present the full ABC inventory of on-sale retail alcohol outlets; however Type 40 and 42 licenses are few and do not contribute to problems with morphing.

Table 1. Description of ABC On-Sale License Types

Type	On-Sale License Description	No. of licenses in CA (2010)
40	On-Sale Beer (no meals)	1,064
41	On-Sale Beer & Wine Restaurant (bona-fide meals)*	22,450
42	On-Sale Beer & Wine Public Premises (Bars) (no meals)	1,348
47	On-Sale General Restaurant (bona-fide meals)	13,006
48	On-Sale General Public Premises (Bars) (no meals)	2,842
**“Bona-fide meals” are regular meals (breakfast-lunch-dinner) prepared in a kitchen on premises		

8 Ruggless, Ron (2011), “A new happy hour,” Nation’s Restaurant News. March 21. Retrieved from <http://www.nrn.com/article/new-happy-hour>.

9 For background discussion of the history of morphing and its control, see F.D. Wittman, “Restaurants that ‘morph’: Problems and prospects for prevention and mitigation.” Berkeley CA: CLEW Associates, July 15, 2011 (unpublished).

10 See Responsibility Hospitality Website at www.rhiweb.org

Police events related to ABC License Types

Type 47s stand out. People usually think bars, rather than restaurants, are the primary source of drunkenness and other alcohol-related problem behaviors at on-sale outlets. When measured by police events, however, Type 47 licenses stand out as the ABC license type that receives the greatest number of police calls for AOD offenses, as well as total police events. In part, this occurs because there are more Type 47s than Type 48 bars in a given community. However, a detailed examination of community-level police data reveal troublesome outlets – measured by the frequency of calls for service and types of offenses – follow similar patterns for both Type 47 and Type 48. These patterns show up in types of calls-for-service, frequency of calls per outlet, and range of calls per outlet, illustrated below. These similarities indicate that troublesome Type 47 and Type 48 outlets are similar kinds of establishments, typically characterized as a loud or rowdy bar, associated with very high levels of alcohol consumption and unruly behavior by patrons.

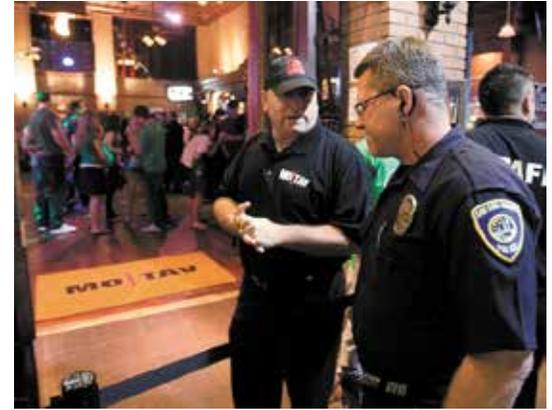


Table 2 shows police events for a mid-sized California city (population 133,000) to illustrate these relationships.¹¹ The total rate of police calls per outlet is virtually the same for Type 47s and Type 48s. The rates per outlet for AOD-related events and for arrests are comparable, although somewhat higher for Type 48s. Also similar is the pattern of police events (relative number of alcohol law violations, drug offenses, assaults, disturbances, and other alcohol-related offenses). Note there are fewer calls for service to far more numerous Type 41 Beer & Wine restaurants (77 Type 41s compared to 49 Type 47s). Type 41s generate about one-fourth the rate of AOD calls per outlet, and less than one-sixth as many arrests, compared to Type 47s.

**Table 2. Police Events at On-Sale Alcohol Outlets in a Mid-Sized, Middle-Class Calif City
Calls for Service by ABC License Type, CY 2010**

ABC Type	Nbr of Outlets in City	Total Calls for Service	Total Calls per Outlet	AOD Calls per Outlet	Arrests per Outlet
41	77	659	8.6	1.1	0.8
47	49	1,819	37.1	4.4	6.1
48	8	301	37.6	6.8	7.6

High levels of police activity at licensed outlets. Types 47s in this example city lead the alcohol outlets among the “Top Ten” outlets that generate ten or more AOD events annually (violations of alcohol/drug laws such as public drunkenness). The table below shows that four Type 47s, two Type 48s, and one Type 41 generate 10+ police calls for AOD-specific offenses during the year.

Table 3. On-Sale Outlets with 10+ AOD-Specific Events, Ordered by AOD Events and Total Events, with Arrests, by Address (Calendar Year 2010)

ABC Type	Establishment Type (Address not shown)	Total Events	AOD Events	Total Arrests
47	Café/Dancing*	152	39	32
41	Pizza Place*	115	28	6
47	Bar & Grill*	120	21	24
48	Bar*	100	16	22
47	Bar & Grill*	69	14	15

¹¹ City of Fullerton ASIPS/GIS Community Tour Report (CY 2010), prepared by CLEW Associates, Berkeley, California, under support from Orange County Health Care Services Agency ADEPT, August 25, 2010.

Table 3. On-Sale Outlets with 10+ AOD-Specific Events, Ordered by AOD Events and Total Events, with Arrests, by Address (Calendar Year 2010)

48	Bar	57	14	13
47	Cantina*	95	11	15
	Totals	708	143	127

* This address also showed 10+ AOD Events in reports for CY 2008 and CY 2009

2. CALIFORNIA ABC IS CHALLENGED TO MAINTAIN UP-TO-DATE LICENSING FOR ON-SALE LICENSES

The current ABC system for licensing on-sales retail outlets, created as part of agency reform in 1956, has not kept pace with changes in the on-sale hospitality industry. The California State ABC processes on-sale licenses through nineteen District Offices located throughout the state. A recent survey of District Office experiences with morphing¹² identified four challenges faced by the ABC in managing problematic morphing in the burgeoning bar-restaurant industry: (1) Out-of-date ABC definitions for restaurants and bars; (2) Declining resources for licensee oversight, education and compliance; (3) Narrowly-focused and time-consuming policies for disciplinary action and license appeals; and (4) Dependence on local jurisdictions to participate in effective oversight of on-sale outlets.

Out-of-date ABC license definitions for restaurants and bars

The ABC Act definitions currently in force for restaurants and bars have not been updated since they were enacted in 1957. The Act defines restaurants and bars as two distinct types of on-sale establishments:

- Restaurants, or “bona-fide eating places,” are defined by Business & Professions Code Section 23038;
- Bars, or “public premises,” are defined by B&P 23039 (see Appendix).

Bona-fide eating places are required to offer meals at customary times of day (e.g., breakfast, lunch, or dinner) that have been prepared in a kitchen on the premises. Persons under 21 are allowed on the premises. Public premises regulations do not permit meals to be served (though snack foods are allowed) and do not permit persons under 21 on the premises. Neither ordinance makes any reference to live music, dancing, or entertainment. The California ABC Act contains no definitions or regulations regarding nightclubs, dance-halls, or cabarets with live entertainment. The ABC permits these activities at restaurants and bars, at the discretion of the licensee and subject to local zoning ordinances. Definition of these activities is the purview of local land-use planning and zoning ordinances as described below.



The distinction between these two definitions has become distorted and unclear, as bar-like functions have entered restaurant settings. California court decisions have determined that bar-like functions may occur *within* a licensed restaurant (for example, a separate bar-counter and lounge area), allowing a part of the larger “restaurant” facility to function like a bar.

Declining resources for ABC licensee oversight, education and compliance

The current ABC Restaurant and Bar definitions were written in 1957 as part of a newly-minted agency reform with up-to-date legislation, a new charter, and a staffing level designed to provide a high level of on-site inspection

12 Op. Cit., F.D. Wittman and F. Latcham, Survey Report and Findings: ABC District Office Experiences with Restaurants that Morph into Bars and Nightclubs.

and oversight for on-sale outlets. Over the last forty years, ABC staffing levels have steadily declined and other services for training, compliance and oversight have been challenged to keep pace with the steady growth of retail outlets. The decline in resources relative to industry activity imposes challenges along the entire continuum of ABC oversight from license application review, to education and monitoring for compliance, to enforcement of alcohol laws.

ABC staff resources have declined. The ratio of alcohol outlets per ABC investigator has increased almost five-fold, going from one investigator per 220 outlets in 1965 to about one investigator per 1,000 outlets today, according to ABC figures. Said another way, currently the ABC has about the same number of staff it had in the 1950s to oversee about four times as many retail alcohol outlets today. These reductions have led the ABC to place increasing reliance on self-supervision by the licensee, and to encourage greater involvement by local jurisdictions and local community groups in retail outlet licensing and enforcement.



Education and monitoring resources are voluntary, and meager. In response to community concerns, the ABC Central Office has developed well-regarded educational and monitoring resources to support self-supervision by licensees. ABC offers LEAD (Licensee Education on Alcohol and Drugs), a training program for both on-sale and off-sale operators. Help with bar-checks, surveillance, and Grants to Assist Police (GAP grants) also provide support for local jurisdictions. These services focus on techniques to prevent sales to minors and to inebriated persons, and on management practices to prevent disorderly operations.

These resources, offered at no charge on a voluntary basis, are popular with licensees, but the recent recession has led to cutbacks in the number of trainings offered. As a result, many licensees who want and need these services are not being reached. Among the licensees most in need of these services, and least likely to request them, are operators who create high levels of police problems and community disturbances.

- Responsible Beverage Service training. The ABC offers the Department's free LEAD training a few times each year in each District. ABC scheduled a total of 242 LEAD training sessions in 2012 to reach approximately 50,000 on-sale outlets.
- Grants to assist local law enforcement agencies. The state provides competitive Grant Assistance Program (GAP) contracts to local law enforcement agencies to assist retail operators with compliance and enforcement of alcohol laws. The availability of these highly popular grants (52 in 2012) is well below the demand from the State's nearly 500 cities and 58 counties.
- Bar-checks and covert surveillance. Unannounced site-visits by the police and ABC investigators to licensed establishments help remind operators of the duty to follow alcohol laws closely. ABC provides training for local jurisdictions and limited on-site support for more serious cases.

Narrowly-focused and time-consuming policies limit disciplinary action and license appeals

ABC procedures for case-level retail license enforcement and appeal are complex and demanding. ABC license enforcement follows a highly demanding complaint-driven process initiated by a "protestant" from the community. Enforcement starts with collection of evidence by sworn officers (ABC or local law enforcement) to support formal proceedings. Once sufficient evidence has been collected, the ABC files a charge ("accusation") against the licensee. The accusation is heard by an Administrative Law Judge (ALJ) who rules narrowly on the specific violation in relation to the specific outlet address. These procedures require considerable time and effort by the ABC and by the protestant. Appeals through the ABC Director and the courts can add years and considerable expense to the process.

Methods are available to pinpoint high-risk outlets and address certain high-risk practices among outlets at the community level. The California ABC has developed several well-respected enforcement methods to address chronic community-level problems such as sales to minors (Decoy Buys) and multi-agency inspection of high-problem premises (Impact Program). These measures complement police DUI checkpoints for violation of drinking-driving laws and “place of last drink” studies that identify high-risk bars and restaurants. These expensive labor-intensive methods are not applied on a frequent or routine basis, except when cities in metro areas combine to use DUI checkpoints during certain holiday weekends.



Impact of ABC shortfalls on operators of bars and restaurants. A bar-restaurant operator who participates on a county DUI task force laments the lack of RBS training and enforcement of ABC laws against over-serving. This operator has written a private memoir¹³ that describes his experiences opening a bar-restaurant that offered dancing and entertainment to a young Southern California clientele at a location near beaches and resorts. He started his new business with great enthusiasm, learning on the job how to create a sound business plan and how to cooperate with neighbors and local officials. He also reports that during this period he received no guidance of any kind from the ABC or city agencies (nor did he think to ask) regarding responsible alcohol service, effective patron management and house security policies. He acquired his alcohol management skills the hard way following struggles with his partners that brought multiple citations, tumultuous operations, and forced closure of one establishment. His experiences made him highly critical both of the ABC’s lack of training for individual operators and of city inaction that let several fellow-operators create a hyper-competitive, over-serving bar-restaurant environment that affected the entire community. This created challenges for profitable quiet operation and increased police/community problems but none of his competitors experienced any negative consequences from the ABC or local authorities for over-serving and poor patron management:

“I’ve been in the alcohol selling business for over twenty-one years and have not heard of a single violation for serving an intoxicated customer. I called several owners and managers who have worked in the hospitality business in Orange County for many years...Not one person could remember a single incident...”

“I then contacted the local ABC office and talked with a very helpful investigator ...(who)... informed me that in the prior year, 2011, a total of zero violations had been issued for serving an intoxicated customer ... in Orange County. Zero. There are over 3,400 active on-sales licensees (in the county). (p. 64)”

The memoir calls for the State to pursue a balanced policy of prevention training and diligent enforcement at far greater levels than the author encountered. The author is adamant that the industry cannot reform itself without this oversight. Further, the author calls for cities to take greater responsibility for planning and land-use oversight to avoid over-concentration and to establish an appropriate business climate with written community operating standards for alcohol outlets. The author refers to an important division of labor shared between local planning and zoning authorities and the ABC for the oversight of retail alcohol outlets explained below.

ABC reliance on local jurisdictions.

The ABC shares authority with local jurisdictions (cities and counties) in the process of granting an ABC license and enforcing ABC laws per the California ABC Act (Business and Professions Code, Division 9). The ABC Act gives local jurisdictions opportunities to play vital roles in both licensing and enforcement to prevent problems

¹³ Greg Hanour, *A Business Approach to Reduced Drunk Driving*, 2012 (unpublished).

related to morphing. In general, the ABC has no formal programs or bulletins to inform local jurisdictions on best practices, precedents, and problematic aspects of the exercise of local powers vis-à-vis the ABC. The local jurisdiction decides for itself how vigorously its local public agencies will participate in these functions, particularly with respect to morphing, a matter on which the ABC is officially blind. Three specific sections of the ABC Act described below allow local jurisdictions to shape ABC actions regarding issuance and enforcement of retail alcohol outlet licenses. Section 3 reviews the current ways that local jurisdictions are utilizing this authority, and explores their potential to exercise greater local oversight.

Local planning and zoning (P&B S.23790 and 23791). These two sections of the ABC recognize that local jurisdictions’ (cities and counties) powers to control alcohol outlets through land-use planning and zoning are determinative for retail alcohol outlet licensing and cannot be not superseded by the ABC. (see Section 3 below for further discussion).

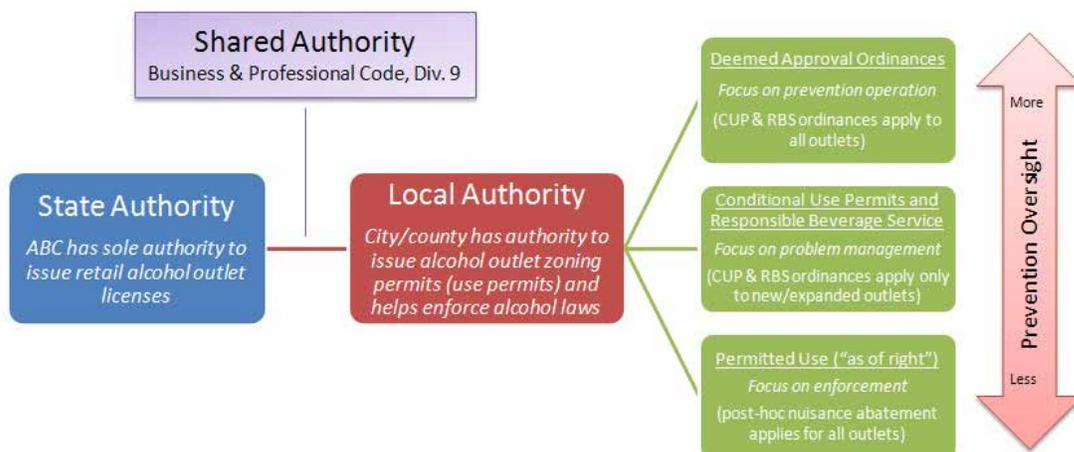
Public convenience or necessity (B&P 23958.4). This ABC “Undue Concentration” law allows a city or county to block a license for a bar, but not for a restaurant, by making a finding of “no public convenience or necessity” (PC or N) for retail alcohol outlets located in high-crime areas or in areas with a high density of alcohol outlets measured by population (census). The law allows the local jurisdiction (city or county) to stop the flow of more bars (Type 40, 42, 48 licenses) into an impacted area by making this finding on a case by case basis. However, the law includes a loophole for restaurants (Type 41 and 42 licenses) that allows the applicant, rather than the city or county, to determine whether “public convenience or necessity would be served by issuance of the license” for a “retail on-sale bona fide eating place” in the impacted area. The Act includes this language: “(b) Notwithstanding Section 23958, the department may issue a license as follows: (1) With respect to a... retail on-sale bona fide eating place license...if the applicant shows that public convenience or necessity would be served by the issuance.”

That is, the ABC Act allows the applicant for a Type 41 or Type 47 license to make his or her own PC or N determination, rather than the city or county. California alcohol policy advocates view this loophole as being in conflict with prevention goals.¹⁴

Shared jurisdiction for enforcement of ABC laws (P&B 24202, 25619). Although the ABC has exclusive authority for issuing and revoking licenses, enforcement of ABC laws is a shared responsibility between ABC and local law enforcement. Because the ABC education and monitoring system is voluntary and enforcement is complaint-driven, the ABC depends heavily on local jurisdictions to monitor licenses and help with enforcement investigations.

¹⁴ The Redevelopment Committee, California Council on Alcohol Policy, explored this issue in 2009-2010.

**Shared Authority for Regulation of California Retail Alcohol Outlets:
Powers of the State Alcoholic Beverage Control Department and Local Jurisdictions (Cities and Counties)**



3. LOCAL JURISDICTIONS CAN DO MORE TO CONTROL AND REGULATE

How have California cities and counties responded as the ABC has shifted its regulatory model to include greater reliance on industry self-monitoring and local control? The following section reviews current responses to morphing problems, describes local powers available to cities to take effective action, and identifies actions cities can take to prevent and reduce morphing. Initiatives being undertaken by the City of San Luis Obispo, whose downtown bar-restaurant establishments provide the opening scene for this Policy Brief, illustrate these actions.

How problems with morphing take cities by surprise.

Most communities welcome new and expanded restaurants with open arms. Most local officials and other local stakeholders relish the prospect of positive contributions from restaurants, with seemingly little regard for the potential threats to public safety, health problems, and community disruption that are associated with unchecked growth and development. With respect to restaurants, cities tend to defer to the marketplace to determine outlet location, size of establishment, type of use, densities (number of outlets in a given area or per population), and operating requirements. Use permits are issued essentially as requested (“as of right”) without special operating conditions or restrictions. This makes it relatively easy for an existing restaurant to expand to bar- and entertainment-oriented activities up to 2:00 am with few restrictions from the city or the ABC.



In the context of rapid local development or redevelopment, the number of restaurants operating under these circumstances can grow quickly in high-density, downtown and redevelopment areas. Growth occurs both for the number of outlets and for increased drinking and entertainment activities. In as few as three or four years, the number of restaurant seats in a downtown area can nearly double.¹⁵ In such a rapidly growing area some restaurants begin promoting drink specials coupled with alcohol-related special events to stay competitive. Local officials (and sometimes the operators themselves) are often taken by surprise at rapid increases in public drunkenness, overcrowding, disturbances, violence and injuries, youth drinking and DUIs. They are also surprised at the extent to which these behaviors can overflow into the surrounding community.

A preventive approach is readily available to all local jurisdictions through local planning and zoning ordinances. As noted in the preceding section, the ABC relies on local jurisdictions to regulate land-use aspects and general business operations of retail alcohol outlets as part of the State licensing and enforcement procedures (B&P 23790). Yet, most local agencies and community groups do not realize the extent to which their local planning and zoning powers can deal effectively with morphing. Currently only a handful of cities and counties use their powers make full use of their powers to work with restaurants so problems can be managed as soon as they appear or can be avoided all together.¹⁶

ABC allowance for local zoning to regulate on-sale alcohol outlets. The ABC Act recognizes that the State cannot regulate on-sale and off-sale outlets without participation by the local jurisdiction. The State lacks capacity to regulate and manage the actual distribution and operation of retail alcohol outlets at the community (city or county) level. The Act accordingly relies on the local jurisdiction to address these issues through zoning and land-use ordinances: The ABC will not issue a retail alcohol license “contrary to a valid zoning ordinance of any city or county” (B&P S. 23790). This means the ABC District Office will not complete processing of a

¹⁵ Op. Cit., F. Wittman, Lessons from Three Orange County Cities. See discussion for City of Fullerton.

¹⁶ F.D. Wittman and M.E. Hilton, “Uses of planning and zoning ordinances to regulate alcohol outlets in California cities, in H. Holder (ed.), Control Issues in Alcohol Abuse Prevention: Strategies for States and Communities, Greenwich CT: JAI Press, 1987, 337-366.

license application until the city or county certifies that the candidate outlet meets local planning and zoning requirements. The ABC thus sets the stage for the local jurisdiction to set limits on locations, numbers, and types of outlets that will receive use-permits, as well as to establish safe operating conditions for outlets.

The ABC provides this opportunity to each local jurisdiction but does not require it. The jurisdictions are left to decide for themselves how diligently to apply local planning and zoning ordinances to retail alcohol outlets on a scale that ranges from laissez-faire to local control. At the laissez-faire (looser) end of the scale, local jurisdictions allow on-sale outlets to operate as regular businesses “as of right.” At the more tightly regulated end of the scale, cities and counties may impose “local control” – local oversight on a case-by-case basis that allows denial of a permit or conditional approval for each outlet through a local conditional use permit (CUP) written into the local planning and zoning code as described below.¹⁷

Local Control: City and county zoning for bars and restaurants.

“Local control” is a term for city or county adoption of CUP requirements written into the land-use plan and zoning ordinance specifically to prevent public safety and health problems, and to protect community well-being related to retail alcohol outlets. Local control allows cities and counties to monitor retail alcohol outlet operations closely and to take action on them quickly before they get out of hand. Cities that adopt “as of right” ordinances forego this level of oversight, and thus tend not to see the problems coming until they erupt into major community concerns.

Restaurants, bar-restaurants bars, and nightclubs as a local land-use issue. Although state law does not clearly distinguish between “traditional restaurants,” “bars,” and “nightclubs,” local land-use and zoning ordinances are well suited to make such distinctions according to types of land-use and operational activities. Local jurisdictions can assign appropriate land-use zones (geographic areas) for each land-use category of ABC-licensed “restaurant” to assure operations do not disturb neighbors or create undue police problems. Each local jurisdiction can fine-tune its CUP to set operational requirements for service of alcoholic beverages and management of the premises to prevent high-risk alcohol-related behaviors. Cities that apply local control to all bars and restaurants – that is, to all local ABC License Types 40, 41, 42, 47, and 48 – can encourage an active restaurant / night-life community while avoiding conflicts with other land-uses, public safety problems, and unpleasant surprises and expenses.

Features of Local Control for on-sale alcohol outlets (all types of restaurant, bar, nightclub). A local alcohol outlet control ordinance includes the following features. Although few cities have adopted all six of the salient components of an ordinance shown below, a complete alcohol control ordinance combines all of these features working together:¹⁸

- Definition of on-sale land-use types. On-sale outlets are defined in clear land-use and behavioral terms (“restaurants,” “bars,” “nightclubs,”) and are assigned to zones in the city land-use plan on the basis of compatibility with nearby uses and the community as a whole.
- Conditional use permits (CUPs) for each new / expanded alcohol outlet. CUPs set operational and design standards to protect health and safety through operating conditions such as RBS training, security management, alcohol promotion activities, physical design for surveillance and crime prevention, hours of operation, security, and business plan review.¹⁹
- Deemed-approved ordinances (DAOs) for existing outlets. DAOs bring problematic existing outlets “grandfathered” under previously-granted use-permits into conformity with new CUP requirements.
- Sensitivity to proximity and adjacency issues. Local zoning and land-use planning establishes spacing requirements and late-night hours restrictions to buffer the impact of bars and restaurants on nearby housing and other business.

¹⁷ F.D. Wittman and P. Shane, Manual for Community Planning to Prevent Problems of Alcohol Availability, prepared for California Dept of Alcohol and Drug Programs. Berkeley CA: Prevention Research Center, September, 1988.

¹⁸ F. D. Wittman, F. Latcham, Public Oversight for San Luis Obispo Retail Alcohol Outlets: Issues for Planning and Zoning. CLEW Associates. Berkeley, California, October 14, 2009.

¹⁹ “Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms From Licensed Alcohol Outlets, With Model Ordinance and Bibliography,” Center for the Study of Law and Enforcement Policy, Pacific Institute for Research and Evaluation (Ventura, CA: Ventura County Behavioral Health Department Publication, 2008).

- Density limits. Cities set limits on the density of alcohol outlets by geo-area and by proximity to outlets of similar types. These limits can help avoid conflicts between competing land-uses for non-alcohol businesses and housing; they can also reduce stresses on community services and groups due to crowding, and can reduce crime and community disturbances.
- Fee recovery component. The local ordinance includes a fee schedule charged to the alcohol outlets to cover public agency costs required to administer the ordinance.

Conditional use permits (CUPs) for on-sale alcohol outlets. Each city develops its CUP ordinance based on local needs and preferences, and on local customs and past experiences with alcohol. The CUP accommodates different kinds of outlets and different types of uses as shown in outline form in Table 5 (*See below*). The CUP can be fine-tuned based on needs for the specific kind of outlet. For example, the city can tailor security standards and responsible beverage service (RBS) training requirements according to establishment risk level (for example requiring more on-site security and higher-level RBS training for managers and servers at higher-risk establishments).

Permitted Uses for On-Sale Retail Alcohol Outlets Example City, California	Traditional Restaurants	Bars and Bar- Restaurants	Nightclubs
<i>Architectural Features</i>			
Bar seating for 10% or more of customers	No	Yes	Yes
Entertainment devices – Large-screen TV, jukeboxes	No	Yes	Yes
Games of skill, amusement devices, contests	No	No	Yes
Elevated stage, dance floor, sound board	No	No	Yes
<i>Operating Features</i>			
Responsible beverage training (RBS)	Low	Medium	High
Late-night operation after kitchen closes (no minors)	No	Yes	Yes
Promotions and advertising for special events	No	No	Yes
Alcohol advertising that encourages heavy drinking	No	No	No
Over-pours and self-serve practices	No	No	No
<i>Zones where outlet is allowed</i>			
Residential-commercial	Yes	No	No
Commercial-mixed use office & retail	Yes	Yes	No
Commercial-downtown & entertainment	Yes	Yes	Yes

Implementation of CUPs for problems related to morphing. An estimated 60 percent of California cities have adopted CUPs for bars and restaurants.²⁰ Although only limited formal research has been conducted to demonstrate the effectiveness of CUPs to reduce problems such as violence related to morphing,²¹ evidence is accumulating to show that greater alcohol outlet density adversely affects public health and safety.²² California cities are adopting alcohol CUP and DAO ordinances specifically to address problems with morphing after the problems attract widespread public attention.²³ Cities reporting considerable success using CUP ordinances link police departments and planning/zoning offices in an ongoing (routine) oversight process that includes the following components, described further in the case example below:

- (1) Reliable documentation and monitoring of police events at all on-sale outlets to show clearly which outlets (or geographic districts or areas) generate high levels of police calls;
- (2) Routine training and surveillance to help the operator maintain outlet performance to comply with CUP requirements;

20 Op. cit., F.D. Wittman and M.E. Hilton, "Uses of planning and zoning ordinances to regulate alcohol outlets in California cities."

21 R. Parker, "Alcohol and Violence: Connections, Evidence, and Possibilities for Prevention," (Parker), in *Journal of Psychoactive Drugs* (Eds. Rawson, Finnerty & Urada SARC Supp't No. 2, May 2004).

22 "Alcohol Outlet Density and Public Health," Alcohol Justice, see www.alcoholjustice.org/resources/fact-sheets/html

23 Op. cit., F.D. Wittman, Lessons from Three Orange County Cities. See discussion for cities of Fullerton and Newport Beach.

(3) Prompt enforcement to address problems as soon as they appear, rather than letting problems increase in visibility and difficulty before taking action;

(4) Sustained support and direction from local elected officials (e.g., city councils, planning commissions, zoning boards) for diligent use of public resources and continuing commitment to find the appropriate place for bars and restaurants in the long-range community plan.

Partnership with ABC for alcohol outlet oversight. Opponents of local control sometimes say “oversight of alcohol outlets is an ABCs responsibility, not a local obligation.” The opposite is true. The ABC is solely responsible for the retail alcohol license, but the local jurisdiction bears primary responsibility for oversight of the place where the license is located. As noted above, ABC invites and encourages (but does not require) the local jurisdiction to activate effective community oversight within the regulatory shell provided by the ABC. Table 6 illustrates this relationship.

STATE ABC LICENSE REQUIREMENTS	LOCAL ZONING CONDITIONS
ABC licenses an individual operator	Zoning office issues a use-permit for a location
ABC definitions allow “restaurant” and “bar” to be merged at a single location; no “nightclub” definition.	City can distinguish between restaurants, bars, and nightclubs by their primary function, and define geographic parameters for each as distinct land-uses.
Bans sale of alcohol from 2:00 am to 6:00 am	Hours of outlet operation are set locally
LEAD-RBS training focuses on alcohol laws and general features of good practice	Local RBS training can be expanded to include high-risk sales practices of specific concern to community
Proximity issues covered by minimum distances from residences and sensitive uses (discretionary)	Proximity and spacing requirements can fit the local ecology and community concerns (can be mandatory)
Density requirements (crime, population) apply to restaurants only with consent of licensee (S. 23958.4)	Density requirements by geo-area and crime rate apply to all on-sales at discretion of jurisdiction
License fee renewals are minimal for on-sale outlets	Local jurisdiction may set use-permit fees to cover local costs of administration for local control
ABC has no CPTED (Crime Prevention Through Environmental Design) requirements for on-sale facilities	Local jurisdiction may require preventive design features
ABC enforcement proceeds through the Accusation process	CUP enforcement proceeds through local zoning board independently of ABC
ABC enforcement operates primarily on a post-hoc problem-solving basis with limited staff resources	Local oversight can include compliance training, preventive surveillance and problem-solving from a variety of sources.

An exemplary use of Local Control to reduce morphing

The City of San Luis Obispo exemplifies municipal leadership in managing chronic drunkenness and police events related to morphing (described in the opening scene for this Brief). After years of enhanced policing in the Downtown area, and no relief from the problems, the city engaged in a three-year planning process to adopt new land-use and zoning requirements that establish conditional-use standards for preventing drunkenness and related behaviors among all of the city’s retail alcohol establishments. Under joint leadership from the police department and the planning department, the city expanded its original vision beyond the Downtown area, and created a new deemed-approved ordinance applicable to all on-sale and off-sale retail alcohol outlets throughout the city. This case example outlines the features of the ordinance, the process by which the ordinance was established, and the city’s plans for implementation and continuing oversight.

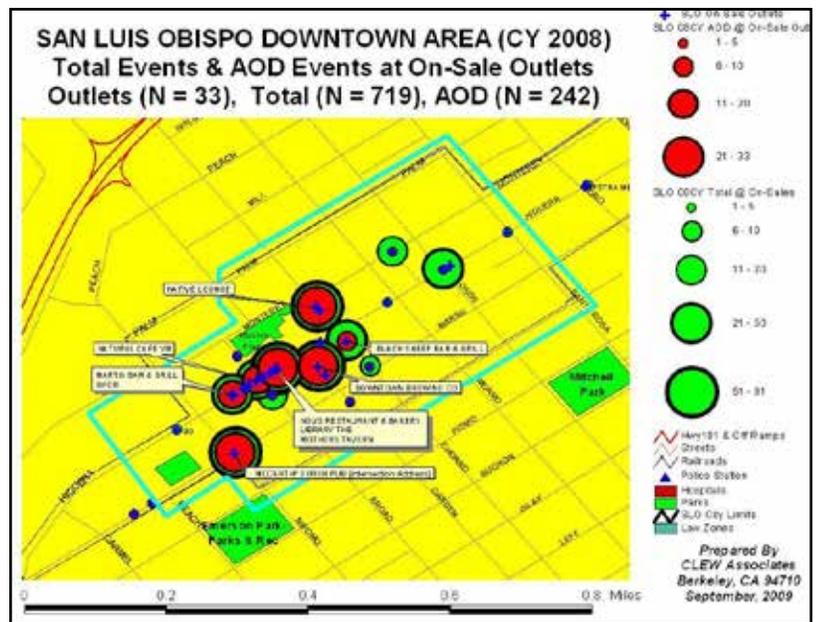
Features of the ordinance. Action by the San Luis Obispo City Council in June, 2012, filled three major gaps in public oversight to “enhance alcohol regulation in a manner calculated to give the City more effective local controls to address problem outlets:”²⁴ These actions include:

- A new land-use category for restaurants defined “Restaurants with Late Night Alcohol Service” as restaurants that serve alcohol after 11:00 pm.
- A new deemed approved ordinance²⁵ holds all on-sales and off-sales outlets, including new and existing outlets, accountable for safe and responsible operations through operating conditions (CUPs) previously applied only to bars and nightclubs. All existing outlets defined as Late-Night Restaurants are deemed existing non-conforming uses subject to CUP standards.
- Additional CUP requirements apply to new off-sales outlets whose primary activity is the sale of alcohol (not incidental sales in grocery stores and convenience stores).

Local planning process. A four-step participatory planning process invited all local stakeholders to articulate problems and possible solutions related to morphing at Downtown restaurants. The process explored ways to prevent problems related to excessive drinking and drunkenness through a combination of improvements to hospitality industry practices and greater local public oversight. The director of the SLO Community Development Department made efforts to keep the process thorough, inclusive, transparent, and civil. The city council kept up the pressure on all parties to act expeditiously.

(1) Documentation (August – October 2009).

The planning process began with comprehensive documentation of all police events at all retail alcohol outlets in the entire city for a full calendar year. Total calls for service and all AOD-related calls were summarized (54 police event categories) for each ABC-licensed alcohol outlet address by time (time of day, day of week, and month), and by ABC License Type. Police events at alcohol outlets were mapped using GIS displays. Tables were also provided to show the proportion of total police resources being devoted to management of retail outlets, in particular to the Downtown on-sales operating late at night. This documentation was presented to the City Council in a public meeting on October 20, 2009, in the form of a City of San Luis Obispo ASIPS/GIS Community Tour report posted on the City Council’s website for public access (ASIPS/GIS = Alcohol/Drug Sensitive Information Planning System in a Geographic Information System format).²⁶ This report provided all stakeholders – owners/managers of the restaurants, neighbors, customers, health and social service providers, public officials, educators, concerned members of the public – with an accessible, complete, and neutral birds-eye view of community police experiences at all ABC-licensed outlets, presented in the context of total police events throughout the city.



24 San Luis Obispo Community Development Department, Review of Alcohol Outlet Strategies – Enhanced Zoning regulations to improve public safety (R/TA 101-11), May 15, 2012

25 Deemed Approved Alcoholic Beverage Sale Regulations, Ordinance No. 1578 (2012 series), amendments to Title 17 (Zoning Regulations), San Luis Obispo Municipal Code. Adopted by City Council on June 10, 2012.

26 City of San Luis Obispo ASIPS/GIS Community Tour (CY 2008), CLEW Associates, Berkeley CA, October 15, 2009.

(2) Research on oversight methods and an SLO “Hospitality Zone” (January 2010 – January 2011). ASIPS reports are intended to support open community discussion to prevent community-level AOD problems by helping focus attention on management of the settings (locations) where AOD problems occur. To support this discussion, a policy memo accompanying the Community Tour report identified eight issue-areas for consideration regarding local control of retail alcohol outlets.²⁷ This memo helped frame action by owners/managers, occupants/neighbors, and officials/other interested parties to create local policies to minimize and prevent health and safety problems related to the outlets.²⁸ The SLO planning and police departments spent the year researching ordinances and oversight efforts by other cities to regulate on-sale alcohol outlets. Downtown bar-restaurant operators met regularly to explore creation of a hospitality zone for Downtown SLO in similar cities. The city obtained an ABC-funded local law enforcement assistance grant to help explore “hospitality zones” and “entertainment zones” in SLO.

**Downtown On-Sale Outlets with 10+ AOD-Specific Events
Ordered by AOD Events and Total Events, by Address
Frequencies for Downtown San Luis Obispo, CA 2008**

ABC Type	Establishment Address	Total Events	AOD Events	Arrests Total
48	728 Higuera	72	33	32
75	1119 Garden	83	31	39
47	1023 Chorro	78	30	26
47	725 Higuera	91	24	27
47	600 Marsh	52	23	22
48	723 Higuera	59	17	14
48	1032 Chorro	40	17	18
47	673 Higuera	46	12	16

(3) Nightlife Public Safety Assessment (March – November 2011). The city simultaneously stepped up its current enforcement activity and formally explored the concept of developing a Hospitality Zone. The city used the ABC grant to contract with Responsible Hospitality Institute (RHI) to explore creation of a Hospitality Zone in Downtown SLO. RHI hosted four roundtable discussions (Community, Hospitality, Safety, and Development), conducted a leadership summit, and presented a final report to capture stakeholder sentiment for improved practices and oversight to reduce problems related to excessive drinking, drunkenness, and over-crowding. The bar-restaurant operators formed a “Safe Nightlife Association” (formerly

the Restaurant and Bar Owners Association) to prepare recommendations for improved practice. Meanwhile the city staff reported through the Chief of Police to City Council on November 15, 2011, that “Staff has developed an action plan that includes a new regulatory approach designed to mitigate the impact of nuisance and criminal activity caused by alcohol outlets, especially when voluntary compliance and education has not been effective” (p. B3-1).²⁹ City Council instructed staff to proceed with developing the regulatory approach into a formal policy recommendation for action by the council.

(4) Draft and approve new regulations (November 2011 – June 2012). During Spring, 2012, the planning department and police department developed language for the Deemed Approved Alcoholic Beverage Sale Ordinance adopted by the City Council in June. The city found that conventional definitions of “restaurant” (by ABC License Type, by percentage of food/alcohol sales, and by size/type of business or land-use) failed to predict which outlets experienced police problems related to morphing. The variable that worked best was time of day: Late-night operations, after 11:00 pm, as determined by a combination of police data and participants in the Nightlife Public Safety Assessment. Simultaneously, the Safe Nightlife Association announced its intention to adopt five programs for its members: SLO Safe Ride, Downtown Clean-Up, ABC LEAD training (RBS training), “One 86-All 86” plan to make sure a patron ejected from one bar is denied service at all bars, and Patron Responsibility (a marketing program focused on personal responsibility and safety for patrons).

Implementation of the new ordinance. The new DAO ordinance positions community stakeholders to grapple with long-standing morphing issues among Downtown outlets. None of the five programs offered by bar-restaurant operators impose a covenant among the operators to mitigate troublesome alcohol service and patron management

27 F. D. Wittman and F. Latcham, Public Oversight for San Luis Obispo Retail Alcohol Outlets: Issues for Planning and Zoning. Memo prepared by CLEW Associates. Berkeley, California, October 14, 2009.
 28 A. Goldberg and F.D. Wittman, Taking Charge: Managing Community Alcohol and Drug Risk Environments. Developed for the California Dept of Alcohol and Drug Programs by the Community Prevention Planning Project, Institute for the Study of Social Change. University of California. Berkeley, 2005.
 29 San Luis Obispo City Council Agenda Report from Chief of Police: “Update on Alcohol Outlet Public Safety Strategies,” November 15, 2011.

practices that clearly contribute to excessive drinking and drunkenness. Problems that stem from aggressive alcohol promotion and pricing, over-pouring policies, and failure to monitor patron status and condition fall outside of the scope of programs offered by the bar-restaurant operators. The new ordinance creates leverage for the city to mitigate such problematic policies and practices through conditional use permit requirements, including existing outlets through the DAO process. How this leverage is applied depends partly on whether high-risk operator practices continue (ideally, the bar-restaurant operators will help each other moderate their own behavior), and partly on whether community stakeholders vigorously demand action on their concerns for public health and safety. SLO city agencies will serve both as handmaidens to support efforts of these community stakeholders, and as arbiters to monitor outlet performance against CUP standards. City agencies plan to implement the new DAO as follows:³⁰

- Continue surveillance of alcohol outlet performance. Routinely scan all retail alcohol outlets (both on-sale and off-sale) to verify compliance and to identify problems promptly, keeping the stage set for appropriate action as needed.
- Provide prompt and appropriate mitigation. Mitigate violations and irregularities as soon as they appear in a fair and proportionate way that builds good will by focusing on compliance and performance for the new DAO ordinance rather than on sanctions and punishment.
- Sustain transparency and provide feedback. Maintain stakeholder involvement regarding public safety and health issues, and keep abreast of quality of life issues. The City Council requires the Community Development Department to make an annual progress report to the city council.
- Integrate results of day-to-day oversight into the community's long-range plan. The Community Development Department is slated to create an "alcohol element," which includes retail alcohol outlets, during scheduled revisions to the county General Plan. Issues of appropriate density and best mixes of alcohol outlets with other land-uses will be addressed based partly on experience with implementation of the Deemed Approved Alcoholic Beverage Sale regulations and partly on further research. As experience accumulates with DAO administrative costs, City Council may shift these costs from SLO taxpayers to outlet operators.



CONCLUSION

How can the restaurant industry, the ABC, and other State agencies better address public safety and health problems related to morphing at the community level? What more can be done to help local jurisdictions mitigate and prevent problems related to morphing?

The burgeoning restaurant / hospitality industry can be expected to seek expansion of its dining, drinking, and entertainment services. The ABC and local jurisdictions will continue their work to regulate this industry to protect

public health and safety, and to establish local land-use planning and zoning requirements that keep local retail alcohol outlets in balance with other competing uses. Challenges to effective ABC oversight of morphing can be expected to continue. State-level redefinitions of the ABC Act, increased staffing, and greater resources for training and enforcement are all unlikely at the present time due to the State's budget problems. The most effective path is continuing to place emphasis on greater oversight by local jurisdictions and more self-policing by the industry.

On the positive side, two under-used oversight technologies are readily available to prevent problems with morphing. The first is responsible beverage service (RBS) training and management. The second technology is grounded in local land-use planning and zoning specifically to manage retail alcohol outlets. There are leadership

³⁰ Telephone interviews by author with Doug Davidson (August 9, 2012) and Derek Johnson (August 17, 2012), Community Development Department, City of San Luis Obispo.

opportunities for the ABC and other State agencies (Department of Alcohol and Drug Program, Department of Public Health, Office of Traffic Safety) to guide local jurisdictions towards RBS training and management and to promulgate RBS policies and practices to the field. Similarly, local jurisdictions (cities, counties, and their statewide organizations such as the League of California Cities) could make greater use of current planning and zoning powers to realize the benefits of active oversight for all retail alcohol outlets, including all restaurants, through conditional use permits (CUPs) and deemed-approved ordinances (DAOs).

Expanded oversight at the city and county level offers all local stakeholders the opportunity to explore both the proper place (through land-use policies) and the appropriate operation of bar-restaurants (through CUPs and DAOs) in the community. Local agencies and concerned community groups, emboldened with the powers provided by local ordinances, planning tools, and use permits, can set effective limits on numbers, outlet types, locations, and operations to prevent restaurants from morphing into problem-outlets. As restaurant operators, the alcoholic beverage industry, and the hospitality industry continue seeking to expand, local agencies and community groups can develop local controls that set boundaries for density, location, and operation that keep alcohol-related problems in check. San Luis Obispo offers an example for other cities to use in designing their own CUP and DAO ordinances for all retail alcohol outlets – including restaurants – through healthy local debate that resolves differences between those who insist on “patron responsibility” (hold the drinker responsible) and those who demand “operator accountability” (hold the operator responsible). Such a public process, mediated by local officials and perhaps assisted by county alcohol/drug programs and the ABC, will allow the community to enjoy its restaurants, bars and nightclubs with a minimum of harm, damage, and public expense.

APPENDIX

State ABC Act Definitions for restaurants and bars.

ABC Act 23038: “Bona fide public eating place” (Restaurant) means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. “Meals” means the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. “Guests” shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.

ABC Act 23039: “Public Premises” (Bar) means premises licensed with any type of license other than an on-sale beer license, and maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food shall not be sold or served to the public as in a bona fide public eating place, but upon which premises food products may be sold or served incidentally to the sale or service of alcoholic beverages, in accordance with rules prescribed by the department.

Credits:

Thanks to readers who made helpful comments on earlier drafts – Chris Albrecht, Lauren Tyson, Dick Kite, Deborah Linden, Doug Davidson, and Derek Johnson. The idea for this Policy Brief emerged from discussions in the Redevelopment Committee, California Council on Alcohol Policy, after the author introduced the topic of bar-restaurant morphing to the committee in November 2007. With encouragement from Joan Kiley, president of Cal Council, the committee pursued morphing issues until it disbanded in 2011. Members of the committee were Ed Kikumoto (chair), Rick McGaffigan, Michael Sparks, and the author.

Figure 1
Bar-restaurant in Downtown San Luis Obispo

Figure 2
Bar-restaurant in Downtown San Luis Obispo

Figure 3
Police and security staff at bar-restaurant in Downtown San Luis Obispo

Figure 4
Advertising for bar-restaurants in Downtown San Luis Obispo

Figure 5
Advertising for bar-restaurants in Downtown San Luis Obispo

Figure 6
Patrons crowd bar-restaurant in Downtown San Luis Obsipo

ⁱThese comments and the images were presented by Chief Deborah Linden, San Luis Obispo Police Department, at the Alcohol Policy XV Conference held in Washington, DC on December 7, 2010: Session C-28 How California restaurants morph into bars and what the state ABC and cities are doing about it.



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