



Agenda Report

Fullerton City Council

MEETING DATE: APRIL 16, 2019

TO: CITY COUNCIL / SUCCESSOR AGENCY

SUBMITTED BY: KENNETH A. DOMER, CITY MANAGER

PREPARED BY: TED WHITE, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: AMENDMENTS TO TITLE 15 (ZONING) AND TITLE 3 (REGULATION OF ACTIVITIES) – AMENDED CITYWIDE REGULATIONS FOR BUSINESSES SELLING ALCOHOL FOR ON-SITE CONSUMPTION AND BUSINESSES OFFERING ENTERTAINMENT

SUMMARY

As directed by the Resolution of Intention adopted by the City Council on June 5, 2018 the following actions are recommended: 1) an amendment to Title 15 of the Fullerton Municipal Code relating to the citywide regulation of businesses selling alcohol for on-site consumption to update and clarify operational standards, permitted uses, and processes for review and enforcement 2) an amendment to Title 3 of the Fullerton Municipal Code relating to entertainment permits to update and clarify submittal requirements, review processes, and enforcement procedures and 3) consideration of a 12-month waiver of Community Development application fees for existing businesses with active Department of Alcoholic Beverage Control (ABC) licenses to obtain a new or amended land use entitlement (Conditional Use Permit or Administrative Restaurant Use Permit) related to alcohol sales and / or Entertainment.

RECOMMENDATION

1. Introduce Ordinance No. XXXX for first reading by title only and waive further reading of the Ordinance.

ORDINANCE NO. XXXX – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, AMENDING TITLES 15 AND 3 OF THE FULLERTON MUNICIPAL CODE TO UPDATE DEVELOPMENT AND OPERATIONAL STANDARDS, PROCESSES AND ENFORCEMENT TOOLS FOR BUSINESSES SELLING ALCOHOL FOR ON-SITE CONSUMPTION AND FOR BUSINESSES WITH ENTERTAINMENT.

2. Adopt Resolution No. 2019-XX:

RESOLUTION NO. 2019-XX - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, WAIVING COMMUNITY DEVELOPMENT APPLICATION FEES FOR A PERIOD OF 12-MONTHS FROM THE EFFECTIVE DATE OF ORDINANCE XXXX FOR EXISTING BUSINESSES WHICH HAVE AN ACTIVE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE TO OBTAIN OR AMEND EITHER A CONDITIONAL USE PERMIT (CUP) OR ADMINISTRATIVE RESTAURANT USE PERMIT (ARUP) RELATED TO ALCOHOL SALES AND/OR ENTERTAINMENT.

PRIORITY POLICY STATEMENTS

This item matches the following Priority Policy Statements:

- Fiscal and Organizational Stability
- Public Safety.

FISCAL IMPACT

The recommended waiver of Community Development fees for a period of 12 months for existing businesses that need or want to obtain or amend a CUP or ARUP in order to be in compliance with the newly adopted ordinance is anticipated to reduce revenue to the general fund by between \$40,000 to \$80,000. This range is based on an estimated 15 to 30 businesses participating in the proposed fee waiver program. Current fees to amend a CUP or ARUP are \$1,703.80 for CUPs and \$545.40 for ARUPs. New CUPs are \$3,258.60 and new ARUPs are \$997.80.

DISCUSSION

Project Background

In December 2002, the Restaurant Overlay District (ROD) was adopted by the City Council. The ROD streamlined the approval process for non-drive-through restaurants within the downtown by allowing restaurants to expand or locate in and around the Central Business District without the need to provide on-site parking or to obtain a Conditional Use Permit (CUP), as had previously been required.

In June 2007, City Council enacted a moratorium on any new or expanded restaurants serving alcohol, and / or entertainment permits within the boundaries of the ROD. The moratorium period provided staff with an opportunity to develop new regulatory tools for City Council consideration to address impacts associated with the increase in bars and nightclubs in the downtown since the adoption of the ROD.

In March 2008, City Council approved an amendment to the Municipal Code creating an Administrative Restaurant Use Permit (ARUP) process and establishing regulations for downtown restaurants and bars. The adopted ordinance contained 50 standard conditions that provided detailed, prescriptive operational and development standards for these uses.

In 2016, the City Council further amended the Municipal Code to expand the requirement to obtain an Administrative Restaurant Use Permits citywide for businesses selling alcohol for on-site consumption.

In June, 2018, the City Council adopted a Resolution of Intention (Attachment 7) to amend various chapters within the Municipal Code pertaining to alcohol serving establishments to update the regulations, simplify the prescriptive standards and improve enforcement tools.

Throughout summer 2018, Staff conducted a series of outreach meetings with various downtown stakeholders regarding the proposed restaurant regulation amendments culminating in a Planning Commission workshop and community meeting in August, 2018.

On November 28, 2018, the Planning Commission held a public hearing on the proposed code amendments. Following a presentation by Staff, testimony from the public and questions from the Commission, the Planning Commission voted to continue this item for three months to allow Staff time to refine the proposed regulations and continue to outreach to the business community.

On January 30, 2019, the Community Development and Police Departments held a meeting with Downtown restaurateurs to discuss the proposed changes to the restaurant regulations. Approximately 36 attendees representing 19 downtown restaurants / bars provided feedback on the proposed amendments.

Planning Commission Action

On February 27, 2019, the Planning Commission held the continued public hearing to consider proposed amendments to Title 15 of the municipal code. The proposed amendments to Title 15 were separated into two resolutions: 1) a resolution recommending City Council approval of amendments to Chapters 15.04, 15.30, 15.31 and 15.71 of the Municipal Code relating to operational standards and procedures for restaurants serving alcohol and 2) amendments to Chapter 15.90 (Noise) establishing a Downtown Commercial Noise Overlay Zone. The Planning Commission unanimously (5-0) recommended that the City Council adopt the first resolution relating to proposed amendments to Chapters 15.04, 15.30, 15.31 and 15.71 of the Fullerton Municipal Code. Upon advice of the City Attorney, the Commission had no discussion and took no action relating to proposed amendments to Chapter 15.90 (Noise) due to concerns raised by the public regarding the adequacy of the description provided in the public hearing notice. Any future consideration of amendments to 15.90 (Noise) will require a new duly noticed public hearing before the Planning Commission prior to City Council consideration.

It should also be noted that the proposed amendments to Title 3 (Chapter 3.08 - Entertainment) were provided to the Planning Commission as part of the agenda report for context of the proposed regulatory framework only. The Commission did not take any action on Title 3 because it is not in their purview.

Summary of proposed amendments to Title 15 (Zoning)

To ensure that Downtown Fullerton continues to be an attractive place for business investment, a source of community pride and a safe and inviting place for residents, staff conducted a thorough review and evaluation of the current regulatory processes,

development and operational standards and enforcement tools relating to downtown restaurants and bars. Planning Staff also consulted with the Fullerton Police Department, Department of Alcoholic Beverage Control, alcohol policy consultants and other cities to ensure that the proposed regulations reflected best practices related to regulating alcohol serving establishments, with and without entertainment.

The proposed ordinance amends several chapters within Title 15 (Zoning) related to businesses that sell alcohol for on-site consumption. A summary of the amendments is provided below, with the complete draft ordinance language provided as Attachment 2 to this report:

- Chapter 15.04 (Definitions) - New and amended definitions to the types of uses and activities related to entertainment and businesses with on-site alcohol sales including: Ambient Music, Nightclub, Entertainment, Entertainment (Minor Acoustical) and Entertainment (Outdoor), restaurants with on-site alcohol sales, with and without, entertainment.
- Chapter 15.30 (Commercial Zone Classifications) - Updates to the permitted and conditionally permitted uses in the O-P, G-C, C-3 and C-M zones. The proposed amendment also adds micro-brewery with tasting rooms as a listed use in the G-C, C-3 and C-M zones.
- Chapter 15.31 (Businesses Selling Alcohol for On-Site Consumption) - A majority of the current development and operational standards related to businesses selling alcohol for on-site consumption were contained in Chapter 15.30.040.H. The proposed amendment will repeal this subsection and replace it with a stand-alone Chapter (Chapter 15.31). The newly created Chapter 15.31 will provide operational and enforcement procedures for businesses selling alcohol for on-site consumption.
- Chapter 15.71 (Administrative Restaurant Use Permit) - Proposed amendments to this Chapter include clarifications and simplifications to the ARUP process. These changes include the creation of findings for the approval of an ARUP, the procedure for review of ARUP applications and the process to amend an ARUP based on changes to the physical space or operational characteristics of the establishment.

Summary of proposed amendments to Title 3.08 (Live Entertainment)

Chapter 3.08 (Entertainment) related to definitions, application, review and enforcement of Entertainment Permits are contained in Chapter 3.08 (Entertainment) of the Fullerton Municipal Code. The proposed amendments to this Chapter include the creation of new definitions for what constitutes Entertainment and related activities, the creation of a revised application and review process for Entertainment Permits, minimum baseline operational standards for businesses proposing Entertainment and a tiered operational restrictions process for businesses that violate the terms of their Entertainment Permit.

These changes provide the Police Department with an improved framework to regulate the operations of restaurants with entertainment. Requirements include comprehensive security and operational plans and the creation of a tiered operational restriction process for quick enforcement for businesses that fail to comply with their Entertainment Permit.

Enforcement Measures and Staffing

The most common feedback received by Staff from the Planning Commission, business operators and community members has centered on the City's ability to enforce proposed regulations. A common opinion shared with Staff is that the regulations adopted in 2008 have not been effectively enforced, nor have sufficient staffing resources been dedicated to oversight and enforcement. The lack of dedicated resources and attention to enforcement of the applicable codes, land use entitlements and entertainment permits has resulted in uneven enforcement practices, including a lack of follow-through on enforcement actions, which has undermined the credibility of the applicable regulations.

To ensure the successful implementation of the new regulations, Staff is taking the following steps to improve oversight and enforcement:

- 1) Conduct bi-monthly meetings with the Police Department, Echo Unit, Planning, Code Enforcement, Business Licensing and Department of Alcoholic Beverage Control staff to ensure information sharing and coordinated problem-solving (began January, 2019).
- 2) Facilitate Police Department-hosted meetings with downtown restaurant association participants to coordinate security practices, share information about City efforts and maintain open lines of communication (began January, 2019).
- 3) Assign a Community Services Officer (CSO) from the Police Department to act as a dedicated liaison between the ECHO team, Planning, Code Enforcement, State Department of Alcohol Beverage Control and restauranteurs. The CSO will be responsible for the review and issuance of entertainment permits, as well as maintaining records, documenting and processing enforcement actions and scheduling meetings with the Chief of Police should a business violate the terms of the entertainment permit resulting in tiered enforcement actions. The CSO will also review CUPs and ARUPs and assist in the development of appropriate conditions of approval. This position will be a consistent point of contact in the Police Department as members of the ECHO team rotate assignments. Funding for this position is made available through a reclassification of another funded position in the Police Department resulting in no net increase in staffing costs.
- 4) Assign an additional Code Enforcement Officer (CEO) to the central section of the City with a focus on enforcement of restaurant and entertainment regulations, including occasional nighttime and weekend inspections to verify compliance with operational standards and conditions of approval. The CEO position will allow the Echo Unit officers to focus their efforts on addressing criminal activity while the CEO will work with business operators on compliance with municipal codes and entitlements. Funding for this position is available by filling a budgeted Code Enforcement Officer position that is currently under-filled with an administrative position and re-distributing administrative duties among other administrative support staff in the department.

Attachments:

- Attachment 1 – PowerPoint Presentation
- Attachment 2 – Draft Ordinance No. XXXX
- Attachment 3 – Draft Ordinance No. XXXX Redlined
- Attachment 4 – Resolution No. 2019-XX
- Attachment 5 – Planning Commission Staff Report and Resolution PC 2019-03
- Attachment 6 – Planning Commission Minutes - February 27, 2019
- Attachment 7 – City Council Resolution of Intention No. 2018-31