



staff report

TO: Honorable Chairman and Members of the Planning Commission

FROM: Rowena Genilo-Concepcion, Interim Director of Planning and Building Services

SUBJECT: Study Session to consider changes to the approval process related to alcohol licenses for restaurants located within the Town Center (TC) District. Staff will present various options to the Planning Commission for its consideration, including possibly amending the Bellflower Municipal Code to require an administratively-approved conditional use permit rather than a conditional use permit approved by the Planning Commission.

DATE: April 2, 2018

RECOMMENDATION

1. Open the meeting and receive public testimony; and
2. Discuss and provide direction regarding the approval process related to alcohol licenses for restaurants located within the Town Center (TC) District; or
3. Alternatively, discuss and take other action related to this item.

PUBLIC NOTICE

None formally required for study sessions.

CEQA STATUS

Pursuant to the authority and criteria of the California Environmental Quality Act (CEQA), an environmental assessment has been conducted for this project. This project has been determined to be Categorical Exempt (Section 15306, Class 6) from the provisions of CEQA because the project is strictly a study session for information gathering purposes.

BACKGROUND

The purpose of this study session is to review the existing land use entitlement process regarding restaurants with incidental serving of alcoholic beverages, located within the City's TC District (also referred to as "downtown area"). The goal is to discuss whether it would be desirable to amend existing regulations in order to attract more bona fide eating places by expediting the approval process and reducing the application costs. Specifically, the discussion entails the possibility of no longer requiring the traditional Planning Commission-approved Conditional Use Permit ("CUP") for restaurants proposing to serve alcoholic beverages within the downtown area.

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The consideration is only limited to establishments that are operating as bona fide eating places, as defined by California Business and Professions Code (“BPC”) sections 23038 and 23787. As defined, “bona fide eating places” are “licensed premises that are maintained in good faith and used for the regular service of meals to patrons. The premises must have suitable kitchen facilities and supply an assortment of foods commonly ordered at various hours of the day.”

- *Bellflower Municipal Code*

Pursuant to BMC Section 17.48.040 (TC District - Permitted, Conditionally Permitted, and Not Permitted Uses), a restaurant with incidental serving of alcoholic beverages is required to obtain a CUP via a public hearing process. Although the TC District was only established in 1996, the requirement for a CUP has been applicable to certain commercial zones since the adoption of the City’s first zoning regulations in 1962. Since its original adoption, the provisions applicable to downtown area have been amended to allow some form of alcohol related uses to be permitted via an approval of an Administrative Conditional Use Permit, rather than the traditional Planning Commission-approved CUP.

- *California Department of Alcoholic Beverage Control (“ABC”)*

In addition to city approval, establishments serving alcoholic beverages are required to obtain a license from ABC. ABC was created by constitutional amendment effective January 1, 1955, as an independent department of the executive branch of the State government. ABC has the exclusive power, in accordance with laws enacted, to license and regulate the manufacture, importation and sale of alcoholic beverages in the State. It also has the power for good cause to deny, suspend or revoke any specific alcoholic beverage license, regardless whether the establishment was granted a CUP by the City.

Staff contacted ABC to determine whether their review of application requires a certain level of approval from the City (e.g., Administrative, Planning Commission, City Council). In response, the ABC representative indicated that city approval is required pursuant to BPC Section 23790. That code section states “no retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city.” Thus, it does not matter to ABC whether the city approval is at Administrative level, Planning Commission level, or City Council level.

- *Bellflower General Plan and Efforts by the City to Revitalize Downtown Area*

The City’s General Plan (“GP”) states TC land uses are intended to stimulate commerce by promoting a mixture of specialty stores, restaurants, offices, and entertainment facilities designed to attract people and enhance the pedestrian experience (GP, Land Use Element – General). One of the policies for the downtown is to promote the area as the commercial, entertainment, social, and civic hub of the community (GP, Land Use Element – TC Policy 1). In addition, the GP also considers restaurants within the downtown as a desirable “pedestrian friendly” use because of its high customer turnover (GP, Land Use Element – TC Policy 3, Implementation Program 3.4).

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In previous years, City Council adopted ordinances applicable to the downtown area in order to achieve the goals, policies, and implementation programs of the General Plan. Those amendments include introducing overlay zones (e.g., Bellflower Village Overlay Zone (BVOZ) and Bellflower Village Overlay Zone – North (BVOZ-N) within the downtown area to provide development and economic incentives. Other efforts to revitalize the downtown area include the Business Assistance Program (“BAP”), which the Department of Economic Development oversees. In order to provide potential business operators within the downtown area an incentive, the BAP offers a matching loan program for building improvements and also assists in obtaining CUP for the on-site sale of alcoholic beverages.

- *League of California Cities*

The League of California Cities (“LCC”) is an association of California city officials who advocates in Sacramento and Washington, DC so that it may influence policy decisions that affect local government. In addition, the LCC provides education and training for city officials.

In 2011, the LCC released a document regarding permits and best practices for regulating alcohol sales. According to that document, some cities exclude restaurants from CUP requirements, provided that certain criteria in terms of food sales, hours of operation, kitchen facilities, among other factors, are met to ensure that a restaurant does not transform into a more problematic mode of business. It was advised that cities clearly define what constitutes a full service restaurant and to adopt restaurant specific operational requirements in order to prevent businesses from opening under the guise of a full service restaurant, but not actually operating as such, and in effect operate as a bar with little regulatory oversight.

- *Survey of Neighboring Cities*

Staff surveyed the neighboring cities (Norwalk, Lakewood, Paramount, Downey, Cerritos, and Long Beach) to determine their process for restaurants with incidental serving of alcoholic beverages. Four of the neighboring cities (Lakewood, Downey, Cerritos and Long Beach) allow, by right, restaurants with incidental serving of alcoholic beverages within designated areas of their cities.

DISCUSSION

In parallel with the City’s General Plan, Staff believes that properly managed bona fide restaurants are desirable uses within the downtown area. Given that there is already a designated State Department that oversees alcohol licenses, and in keeping with the goal to implement the goals, policies, and programs for the downtown area, it is prudent to re-asses the existing code provisions and to consider options that could assist the downtown area to become a more desirable location for restaurants.

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Option 1: Status Quo – No change in process. Restaurants with incidental serving of alcoholic beverages will continue to be required to obtain a CUP.

Pros: most local regulatory oversight, revocable if in violation, full public notification

Cons: the longest time to process, highest cost to applicant, could be a deterrent to prospective operators

Option 2: Require MCUP – Recommended. Rather than requiring a traditional Planning Commission-approved CUP, restaurants with incidental serving of alcoholic beverages could be processed at staff level.

Pros: revocable if in violation, a more expedited review, lower cost to applicant

Cons: less local regulatory oversight, limited public notification

Option 3: No CUP or MCUP. Only a business license will be required from the City.

Pros: most expedited review, least cost, could be attractive to prospective operators

Cons: no permit to revoke if problematic (although City has other enforcement remedies), no local regulatory oversight, no public notification

Options 2 and 3 will require preparation of a Zoning Ordinance Text Amendment. If either Option 2 or 3 is selected, Staff recommends that specific operational standards (e.g., food sales, hours of operation, kitchen facilities, no dance and entertainment, etc.) be established. Furthermore, the term “bona fide eating places” will need to be defined in order to prevent businesses from opening under the guise of a full service restaurant.

ATTACHMENTS

ABC Documents

Downtown Area Map (TC, BVOZ, BVOZ-N reflected)

IMPACT

Informed Merchants Preventing
Alcohol-Related Crime Tendencies

State of California
Department of Alcoholic Beverage Control

Food Service

To the licensee:

If you are licensed as a bona fide eating place (license Type 41, 47, or 49), you must operate and maintain your licensed premises as a bona fide eating place. You must make actual and substantial sales of meals, during the normal meal hours that you are open, at least five days a week. Normal meal hours are: Breakfast 6:00 a.m. - 9:00 a.m.; lunch 11:00 a.m. - 2:00 p.m.; and dinner 6:00 p.m. - 9:00 p.m. Premises that are not open five days a week must serve meals on the days they are open.

The premises must be equipped and maintained in good faith. This means the premises must possess working refrigeration and cooking devices, pots, pans, utensils, table service, condiment dispensers, menus, posters, signs, and enough goods to make substantial meals. The premises must comply with all regulations of the local health department.

Incidental, sporadic or infrequent sales of meals or a mere offering of meals without actual sales is not compliance. "Meals" means the usual assortment of food commonly ordered at various hours of the day. The service of only sandwiches or salads is not considered compliance. However, certain specialty entrees, such as pizza, fish, ribs, etc., and an assortment of other foods, such as soups, salads or desserts, may be considered a meal.

The Department will presume that a licensee is operating as a bona fide eating place if the gross sales of food prepared and sold to guests on the premises exceeds the gross sales of alcoholic beverages. "Prepared" means any processing preliminary to the final serving of food. (Note: Some licensees have a "conditional" license that requires food sales to be 50% or more of the total gross sales.)

Source: Instructions, Interpretations and Procedures, L-24.1 - L-24.2, April 1, 1975

23038. "Bona fide public eating place," "meals."

"Bona fide public eating place" 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.

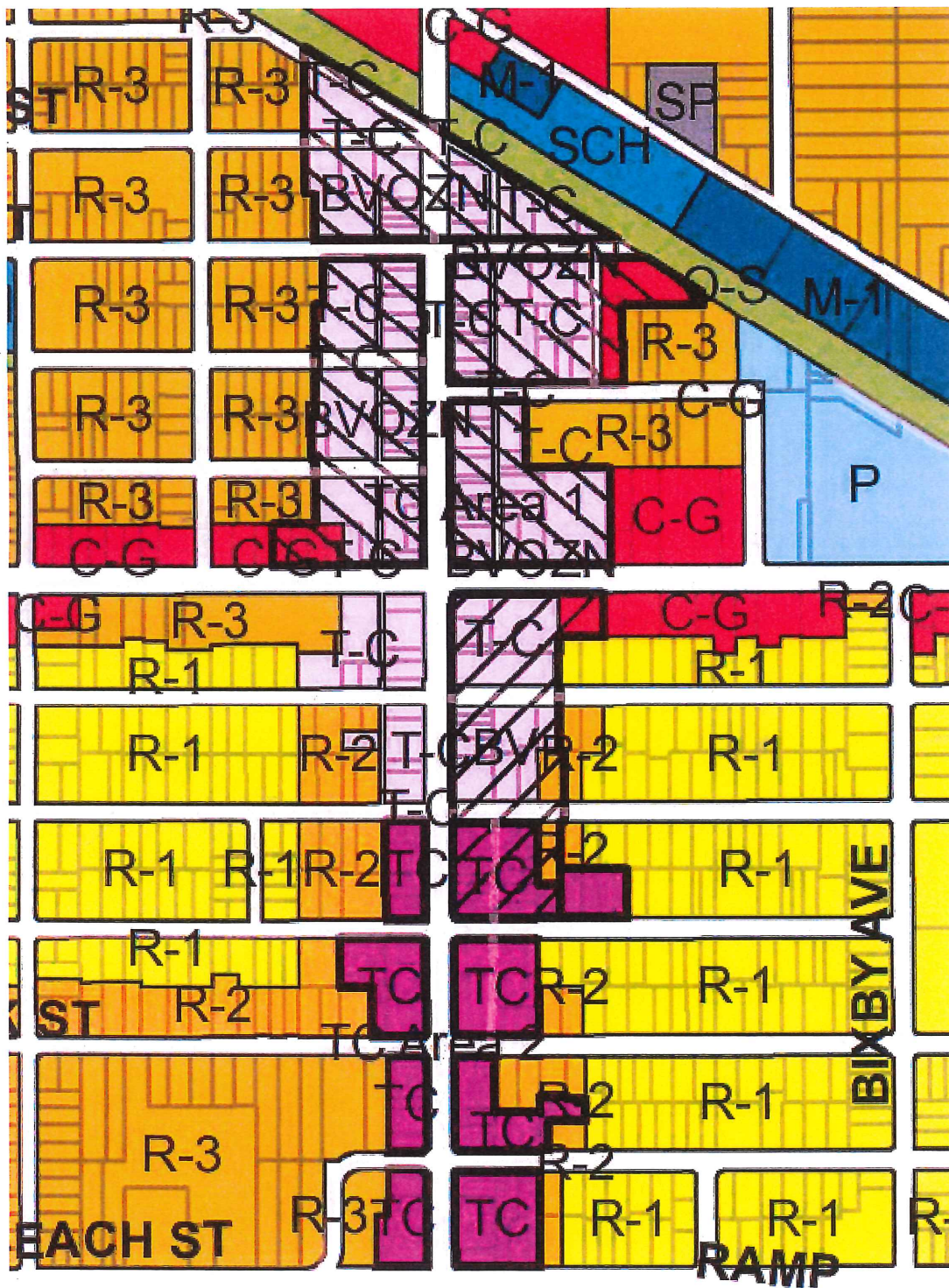
"Meals" means the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. "Guests" shall mean persons who, during the hours when meals are regularly served therein, 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.

Source: California Business and Professions Code

COMMON ABC LICENSE TYPES AND THEIR BASIC PRIVILEGES

LICENSE TYPE	DESCRIPTION
01	BEER MANUFACTURER - (Large Brewery) Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
02	WINEGROWER - (Winery) Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
20	OFF SALE BEER & WINE - (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
21	OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
23	SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery) Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
40	ON SALE BEER - (Bar, Tavern) Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.
41	ON SALE BEER & WINE – EATING PLACE - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
42	ON SALE BEER & WINE – PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
47	ON SALE GENERAL – EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
48	ON SALE GENERAL – PUBLIC PREMISES - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
49	ON SALE GENERAL – SEASONAL - Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.





Legend

A-E (Agricultural Estate)	R-3 (Multiple Residential)	SP (Specific Plan)	Street
C-G (General Commercial)	S-F (Single Family Residential)	RPD (Residential Planned Development Overlay)	Boundary
M-1 (Light Industrial)	SCH (Senior Citizen Housing)	P-D (Planned Development Overlay)	Bellflower Parcels
O-S (Open Space)	T-C (Town Center) Area 1	BVOZN (Bellflower Village Overlay North)	
P (Public Uses)	T-C (Town Center) Area 2	BVOZ (Bellflower Village Overlay)	
R-1 (Low Density Residential)	DFD (Design for Development)		
R-2 (Medium Density Residential)	SP-WA (Specific Plan - West Artesia)		