

EXHIBIT 4



Contra
Costa
County

To: Board of Supervisors

From: PUBLIC PROTECTION COMMITTEE

Date: December 16, 2014

Subject: Findings and Recommendations related to the County's Alcoholic Beverage Sales Commercial Activities Ordinance
(Deemed Approved Ordinance)

RECOMMENDATION(S):

ACCEPT Findings and APPROVE proposed Recommendations related to the County's Alcoholic Beverage Sales Commercial Activities (Deemed Approved Ordinance), and REFER the proposed changes to the Deemed Approved Ordinance to the County Planning Commission for consideration.

FISCAL IMPACT:

No General Fund impact. Costs associated with administering the Ordinance is offset by the fee that the Deemed Approved establishments pay annually when they renew their business license.

BACKGROUND:

The Alcoholic Beverage Sales Commercial Activities Ordinance (Chapter 82-38) or "Deemed Approved Ordinance" (Ordinance) became effective on November 22, 2002. In 2001, as a result of nuisance problems associated with the sale of alcohol and insufficient policy tools to address those problems, the Board of Supervisors initiated a public process to consider adopting a new ordinance regarding the sale of alcoholic beverages in the unincorporated county. The Ordinance was designed to provide the County with a policy and a framework for addressing any problems that may be associated with the sale of alcoholic beverages. A committee was appointed to develop the text of the proposed ordinance and to outline performance standards and an administrative hearing process to review violations of those standards in order to protect the general health and welfare of residents of the county, and to prevent nuisance activities where alcoholic beverage sales occur.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: 12/16/2014 ☒ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 16, 2014

Contact: Bob Calkins, (925)
674-7877

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:

BACKGROUND: (CONTD)

> The Ordinance requires approval of a land use permit in order to establish a new alcohol sales activity after the November 22, 2002 inception date. This date is pertinent to ascertaining if an establishment is a "Deemed Approved Activity", which is an alcohol sales establishment existing prior to the effective date of the Ordinance, and is therefore granted a "deemed approved" status. Such establishments were allowed to continue to operate without a land use permit, but only if they maintained conformance with the deemed approved performance standards. In addition, the Tax Collector collects a \$400 annual fee, of which \$25 is retained by the Tax Collector and the remaining funds go to the Department of Conservation and Development (DCD) to be used to cover any costs associated with inspection of the deemed approved establishments, hearing costs for performance standards violation proceedings, and for staff time to review and monitor correspondence from the State Department of Alcoholic Beverage Control, or "the ABC".

Through the efforts of District V Supervisor Federal Glover, it came to the attention of the Board of Supervisors that a type of flavored malt alcoholic beverage product known as "alcopops" has been identified as a contributor to under-age drinking in the County. The term alcopops usually refers to sweetened malt or alcoholic beverages that are typically sold in single-serving bottles or cans. They are often fruit-flavored and/or bubbly, and resemble soda or other soft drinks. Examples of alcopop products include "Buzz Balls", "Four Loko", "Mikes Hard Lemonade", and fruit/jello shoots. Ice cream products containing alcohol such as "Buzz Bars" are also considered an alcopop product.

On June 3, 2014, the Board of Supervisors referred to the Public Protection Committee (Attachment #1) review of the Deemed Approved Ordinance (Attachment #2) to determine if relevant changes can or need to be made in order to better regulate the sale of alcopops by liquor stores, as well as reviewing the entire Ordinance to make any needed changes that would improve its overall effectiveness relating the sale of alcohol in the unincorporated areas. A 4-phase work plan was approved by the Public Protection Committee (PPC) on June 23, 2014 (Attachment #3). Since then, DCD and Public Health Department staff have worked together on this endeavor and presented proposed findings and recommendations related to the Deemed Approved Ordinance to the PPC at its meeting on October 27, 2014 (Attachment #4). Below is a summary of the proposed findings and recommendations that were approved by the PPC.

FINDINGS

Research

1. There is a perception held by the public that flavored malt beverage products known as alcopops are marketed to youth, and are more accessible to minors than other alcoholic beverages.
2. The Performance Standards notice and Deemed Approved Ordinance pamphlet were out-of-date (old phone numbers, etc.).
3. Health Services Department staff currently conduct inspections of businesses selling alcohol including Deemed Approved establishments.

Mapping

1. Many of the Deemed Approved establishments are within crime reporting districts with 20% higher than average crime rates (Attachment #5).
2. DCD has not received any complaints about a Deemed Approved establishment from the public, sheriff, or any other interested party.
3. DCD and the Sheriff's office have not coordinated sharing of crime data related to Deemed Approved establishments.
4. Over the last four years, crimes have been reported taking place at most Deemed Approved establishments including crimes related to alcohol (sales to minors, intoxicated in public, etc.).

Site Inspections

1. Some Deemed Approved establishments are closed, no longer in business, or no longer sell alcohol.
2. Most Deemed Approved establishments do not have the Performance Standards notice posted in the store as required.

3. Most Deemed Approved establishments with alcopop products have them placed in the back of the store, in the refrigerator section next to other alcoholic beverages (beer, mostly).
4. A few Deemed Approved establishments in Bay Point and Rodeo have placed alcopop products near the front of the store, or near the cash register.
5. Most of the Deemed Approved establishments were found, at the time of the site inspections, to be free of nuisance activities (loitering, public drunkenness, excessive litter, or excessive loud noise).

RECOMMENDATIONS

1. Update the Performance Standards notice with correct contact information.
2. Include a "Quick Response" matrix barcode (QR Code) on the Performance Standards notice that contains information on how and where a person can submit a complaint about the operation of the Deemed Approved establishment.
3. Establish protocols with the Office of the Sheriff to share crime data for all Deemed Approved establishments on a yearly or as-needed basis with DCD.
4. Establish a protocol for performing consistent site inspections of Deemed Approved establishments including developing protocols with Health Services Department for them to share the results of their inspections of businesses selling alcohol including the Deemed Approved establishments with DCD.
5. Establish a protocol with the Tax Collectors Office to ensure Deemed Approved establishments are paying the required fee pursuant to Section 82-38-1006.
6. Conduct periodic trainings on the Ordinance to owners and employees of Deemed Approved establishments.
7. Because the California Department of Alcoholic Beverage Control is responsible for regulating the type of alcohol products that a business may sell, advocate for State legislation banning the sale of alcopop products by businesses that sell alcoholic beverages.
8. Changes to the Ordinance:
 - a) Require the Performance Standards notice to be a certain size (including font size, etc.) and posted in a specific location(s).
 - b) Add language to Section 82-38.814(d)(9) of the Deemed Approved Ordinance specifically allowing the County to prohibit the sale of alcopop products if an establishment is found to be in violation.

CONSEQUENCE OF NEGATIVE ACTION:

Not approving the above recommendations will delay implementing changes to the Deemed Approved Ordinance and improving the processes and protocols related to administering the Ordinance as recommended by the Public Protection Committee.

CHILDREN'S IMPACT STATEMENT:

The existing Deemed Approved Ordinance and the proposed recommendations address the following community outcomes established in the Children's Report Card: (1) Children and youth are healthy and preparing for a productive adulthood; (2) Families are safe, stable and nurturing; (3) Communities are safe and provide a high quality of life for children and families.

CLERK'S ADDENDUM

Maria Macias, resident of Bay Point; Laurie Quezada, resident of Bay Point; Jorge Castillo, Alcohol Justice; Jorge Castillo, Alcohol Justice; Doug Sibley, County Alcohol & Other Drugs Advisory Board. CLOSED the public hearing; ACCEPTED Findings and APPROVED proposed Recommendations related to the County's Alcoholic Beverage Sales Commercial Activities (Deemed Approved Ordinance); REFERRED the proposed changes to the Deemed Approved Ordinance to the County Planning Commission for consideration; and DIRECTED staff to return within a year to update the Board of the effects of the implementation of the performance standards.

ATTACHMENTS

Attachment #1 - 6.3.14 Board Order

Attachment #2 - Deemed Approved Ordinance

Attachment #3 - 6.23.14 Memo to PPC

Attachment #4 - 10.27.14 Memo to PPC

Attachment #5 - Maps of Deemed Approved Establishments