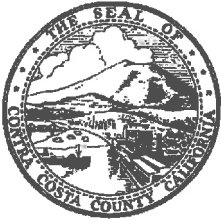


# EXHIBIT 5



## Department of Conservation and Development

### County Planning Commission

**Tuesday, March 24, 2015 – 7:00 .P.M.**

#### **STAFF REPORT**

**Agenda Item #\_\_\_\_\_**

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<b>Project Title:</b>	Proposed Revision to the Alcoholic Beverage Sales Commercial Activities Ordinance, Chapter 82-38 of the County Code
<b>County File(s):</b>	ZT15-0001
<b>Applicant/Owner:</b>	N/A
<b>General Plan/Zoning:</b>	N/A—County Wide
<b>Site Address/Location:</b>	County Wide
<b>California Environmental Quality Act (CEQA) Status:</b>	Exempt
<b>Project Planner:</b>	Gary Kupp
<b>Staff Recommendation:</b>	See Section VI. for full recommendation.

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#### **I. PROJECT SUMMARY**

This is a public hearing to consider a proposed revision to the County Code, Chapter 82-38—Alcoholic Beverage Sales Commercial Activities Ordinance ("Deemed Approved Ordinance"). The proposed revision would add language to Section 82-38.814(d)(9) that would authorize the County to prohibit the sale of alcopops at any establishment not in compliance with the Deemed Approved Ordinance, and also add text to Section 82-38.810 regarding the posting requirements of the Deemed Approved Performance Standards notice, and requiring the posted performance standards notice to be a 11"x17" in size and the font size on the notice to be 20-point type.

Along with the proposed code changes, various policy revisions are also being recommended in order to better coordinate the efforts of the Department of Conservation and Development with other County departments and agencies for

implementation and enforcement of the Deemed Approved Ordinance. Such policy revisions would include establishing protocols with the Office of the Sheriff, the Tax Collector, and the Health Services Department for improved information and data sharing concerning Deemed Approved alcohol establishments in the unincorporated areas of Contra Costa County.

## **II. BACKGROUND**

Through the efforts of the District 5 Supervisor, Federal Glover, it has come to the attention of the Board of Supervisors that a type of alcoholic beverage product known as "alcopops" has been identified as a contributor to under-age drinking in the County. On June 3, 2014, the Board of Supervisors delegated to the Public Protection Committee the task of reviewing Chapter 82-38 of the ordinance code, known as the Alcoholic Beverage Sales Commercial Activities Ordinance, (commonly referred to as the "Deemed Approved Ordinance") to determine if relevant changes can or need to be made to the ordinance in order to better regulate the sale of alcopops by liquor stores. The Public Protection Committee then enlisted the Department of Conservation and Development (DCD) to review the entire ordinance to make any needed changes that would improve its overall effectiveness relating to the sale of alcohol in the unincorporated areas.

The Deemed Approved Ordinance, Chapter 82-38 (see Attachment #1), 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 unincorporated Contra Costa County. The Deemed Approved 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 for reviewing 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.

The Deemed Approved 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 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”.

### **III. CEQA STATUS**

This revision is not subject to the California Environmental Quality ACT (CEQA), pursuant to CEQA Guidelines 15061(b)(3). It can be seen with certainty that there is no possibility that the proposed ordinance amendment will have a significant impact on the environment. The proposal will only serve to clarify and make enforcement and administration of the Deemed Approved Ordinance more efficient.

### **IV. AGENCY REVIEW**

County Counsel has conducted a preliminary review on the proposed revisions to the Deemed Approved Ordinance and has provided a draft of the proposed ordinance amendment (see Attachment #2). Prior to an adoption by the Board of Supervisors of the revisions, County Counsel will conduct a final and conclusive review of the proposed changes to the Ordinance Code.

### **V. PROJECT DESCRIPTION**

On June 3, 2014, the Board of Supervisors referred to the Public Protection Committee (PPC) the task of reviewing the Deemed Approved Ordinance to determine if relevant changes can or need to be made in order to better regulate the sale of alcopops by liquor stores and other outlets, as well as reviewing the entire ordinance to make any needed changes that would improve its overall effectiveness relating to the sale of alcohol in the unincorporated areas. Since the Deemed Approved Ordinance is enforced by the Department of Conservation and Development, the PPC delegated the task to DCD staff. Subsequently, DCD staff developed a 4-phase work plan to examine the overall adequacy of the Deemed Approved Ordinance and to explore possible amendments that could be made to specifically address the sale of alcopops in unincorporated areas of the County. The

work plan was approved by the PPC on June 23, 2014 and consisted of the following tasks.

**Phase I: Data Gathering:** Data was collected from various sources including the Health Services Department and the State Alcoholic Beverage Control, related to:

- Determine how alcohol consumption/sales impact communities especially its youth.
- Identify viable resources for quantitative data collection and analysis regarding community impact aspects of alcohol sales on the community and general compliance with Deemed Approved Ordinance.
- Mapping of existing alcohol-sales outlets in relation to schools, public parks, playgrounds, recreational areas, churches, etc.
- Researching existing literature on alcopops.
- Review and update the list of Deemed Approved alcohol-sales outlets and establish protocols/methods of verifying "exempt status" of alcohol-selling establishments.
- Update all Deemed Approved contact information, brochure, literature and electronic information.
- Cross reference State ABC list of active liquor licenses in the unincorporated County against the current Deemed Approved list and Tax Collector's list of Deemed Approved fees collected.

**Phase II: Site Inspections:** Site visits were conducted by DCD's Code Enforcement Division to all of the deemed approved locations in the unincorporated areas. The task list included:

- Conducting site inspections of all Deemed Approved alcohol selling establishments to verify compliance with current Ordinance (Sec. 82-38.808).
- Reviewing complaint data and/or law enforcement actions, if any, for each establishment.
- Compiling/analyzing results of site visits and complaint/law enforcement action data.

**Phase III: Analyze Data:** This phase consisted of analyzing the data collected in Phase I, and analyzing the field information gathered from the site inspections conducted by Code Enforcement in Phase II. This information was used to develop a strategy for making policy recommendations, updates, or changes to the Deemed Approved Ordinance, as well as enforcement procedures that will allow the County to better regulate the sale of alcohol in the unincorporated areas.

**Phase IV: Develop Policy Recommendations:** DCD developed revisions to the Deemed Approved Ordinance that the Public Protection Committee could recommend to the Board of Supervisors in order to help affected communities in a real and meaningful way. DCD, in cooperation with Public Health Department staff, worked 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. Subsequently, on December 16, 2014, the Board of Supervisors approved the findings and the proposed ordinance changes, and referred them to the Planning Commission for consideration. Accordingly, these policy revisions and ordinance changes are now being presented to the Planning Commission for review and approval.

## **VI. RECOMMENDATIONS**

Recommend to the Board of Supervisors that they approve the following proposed recommendations that were approved by the PPC.

- 1) Recommend approval of the proposed changes to the Deemed Approved Ordinance Sections 82-38.814(d)(9) and 82-38.810 as shown in the attached draft ordinance amendment (see Attachment #2).
- 2) Have the Performance Standards notice contain a smart phone "Quick Response Code" (QR Code) that contains information for how and where a person can submit a complaint about the operation of a Deemed Approved establishment.
- 3) Establish protocols with the Office of the Sheriff to share with DCD crime data for all Deemed Approved establishments on a yearly basis.
- 4) Establish protocols for performing consistent site inspections of Deemed Approved establishments, including developing protocols with the Health Services Department to share with DCD the results of their inspections of businesses selling alcohol, including the Deemed Approved establishments.
- 5) Establish protocols with the Tax Collectors Office to ensure Deemed Approved establishments are paying the required fee pursuant to Section 82-38.1006 of the Deemed Approved Ordinance.
- 6) Conduct periodic training on the Deemed Approved Ordinance to owners and employees of Deemed Approved establishments.
- 7) Advocate for State legislation prohibiting the sale of alcopop products by businesses that sell alcoholic beverages.
- 8) Update the performance standards notice with correct contact information.