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CITY ATTORNEY

REPORT NO. R 22 - 0011

JAN 14 2022

REPORT RE:

**DRAFT ORDINANCE AMENDING SECTIONS 12.21, 12.22, 12.24, AND 19.04 OF
CHAPTER 1 OF THE LOS ANGELES MUNICIPAL CODE TO CREATE THE
RESTAURANT BEVERAGE PROGRAM AND THE RESTAURANT BEVERAGE
PROGRAM-ALCOHOL SENSITIVE USE ZONE**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 17-0981

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance amends Sections 12.21, 12.22, 12.24, and 19.04 of Chapter 1 of the Los Angeles Municipal Code (LAMC) to create the Restaurant Beverage Program (RBP) and the RBP-Alcohol Sensitive Use Zone, which are administrative review processes that would allow qualifying restaurants to serve alcoholic beverages, subject to certain requirements and limitations, thus providing eligible applicants with an alternative to the LAMC's conditional use permitting process.

Background

On August 25, 2017, a motion (Krekorian-Blumenfield) was introduced requesting the Planning Department to recommend a streamlined process through which over-the-counter conditional use permits for the on-site sale of alcohol could be issued to applicants that meet certain criteria and agree to certain conditions, in order to create a more efficient and economic option for business owners. On October 2, 2017, the Ad Hoc Committee on Comprehensive Job Creation Plan (Ad Hoc Committee) considered the motion, and on October 18, 2017, the City Council adopted the motion as amended (Ryu-Krekorian) to also include recommendations on the use of different criteria in distinct geographic areas based on the density of existing CUPs for alcohol sales.

The matter was referred to two of the City Council's committees: the Ad Hoc Committee and the Planning and Land Use Management (PLUM) Committee. On April 18, 2018, the Ad Hoc Committee heard the Planning Department's report in response to the motion, which proposed a ministerial permitting process for on-site alcohol sales. After making several amendments to the Planning Department's proposed program involving the standard conditions and the notification requirements, the Ad Hoc Committee recommended that the Planning Department be instructed to prepare an ordinance amending the Zoning Code to create an administrative process to streamline the issuance of conditional use permits for the on-site sale of alcohol. On May 22, 2018, the PLUM Committee considered the Planning Department's report. After considering the matter, the PLUM Committee asked for a report back on additional related issues, and, like the Ad Hoc Committee, recommended that the Planning Department be instructed to prepare a draft ordinance establishing the administrative clearance process for the City Planning Commission's (CPC) review.

On August 14, 2018, the City Council adopted the recommendations of the Ad Hoc Committee and the PLUM Committee, as amended (Harris-Dawson-Huizar; Krekorian-O'Farrell). On June 25, 2020, the CPC voted to recommend adoption of the Planning Department's proposed ordinance establishing the Restaurant Beverage Program (RBP).

At its meeting on November 19, 2020, the PLUM Committee adopted the CPC's recommendation with several amendments to the proposed ordinance and recommended that the City Attorney be requested to prepare and present a draft ordinance approved as to form and legality. Included in these amendments was the establishment of an "opt-in" provision so that Council districts or subareas therein could remain subject to the Zoning Code's existing conditional use permit process for on-site alcohol sales; the restriction of program eligibility to LA County residents or businesses; the limitation of approvals under the RBP to provisional status for the first year; and the addition of requirements and limitations for businesses in "alcohol sensitive use zones."

The file was then transmitted to the Economic Development and Jobs (EDJ) Committee. On May 25, 2021, the EDJ Committee considered the proposed ordinance and concurred with the PLUM Committee's recommendations, as amended. The EDJ Committee recommended that the City Attorney be requested to prepare and present a draft ordinance providing the aforementioned opt-in provision, as well as other provisions, including one allowing the establishment of alcohol sensitive use zone designations in Council districts. Correspondingly, the EDJ Committee's recommendation included a list of additional standards and limitations to be applied to businesses in this zone under the RBP. On June 30, 2021, the City Council adopted the EDJ Committee's recommendations.

Summary of Ordinance Provisions

The CPC's transmittal report to the City Council, dated July 14, 2020 (CPC Transmittal Report), includes the Planning Department's staff report, which provides a detailed description of the draft ordinance's provisions. Notably, the draft ordinance also includes the amendments approved by PLUM on November 19, 2020, and EDJ on May 25, 2021, thus establishing two similar processes in the Zoning Code for the administrative clearance of applications for on-site alcohol sales: the RBP and the RBP-Alcohol Sensitive Use Zone.

Both processes impose standard conditions as recommended by the CPC and as further amended by the PLUM and EDJ Committees to minimize the impact of on-site alcohol sales and consumption on surrounding communities. Under both processes, applicants must have a business tax license issued by the City of Los Angeles. The latter process imposes additional standard conditions that aim to limit the impact of increased alcohol sales on the surrounding community and also specifies that the approval for the first year of operation after obtaining the administrative clearance is provisional. After the first year, the location is subject to review to determine whether it can continue to utilize the administrative clearance or go through the conditional use process in order to continue on-site alcohol sales.

Under the draft ordinance, the City Council establishes and modifies the areas subject to the RBP-Alcohol Sensitive Use Zone by resolution. The City Council, by resolution, can also limit the sale of alcohol in these areas to beer and wine for the provisional year of approval.

Additionally, the draft ordinance amends LAMC Section 19.04 to update the list of fees to reflect those fees imposed under the RBP and RBP-Alcohol Sensitive Use Zone. The Planning Department has provided an analysis of these fees to the Council File to support the City Council's consideration and adoption of this draft ordinance.

Charter Findings Required

Charter Section 558(b)(3) requires the City Council to make the findings required in Subsection (b)(2) of the same section, namely adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare, and good zoning practice. Charter Section 558(b)(3)(A) allows the City Council to adopt an ordinance conforming to the CPC's recommendation of approval of the ordinance, if the CPC recommends such approval. Similarly, Charter Section 556 requires the City Council to make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan. The City Council can either adopt the CPC's findings and recommendations as set forth in the CPC Transmittal Report to the City Council or make its own.

California Environmental Quality Act (CEQA) Standard of Review

The CPC recommends that the City Council finds, based on the whole of the administrative record and the Initial Study completed for this project, that no significant impacts will result from the project's implementation, and, therefore, that the Council adopts a negative declaration for the project. Under CEQA, the City Council may only adopt the proposed negative declaration if the City Council finds on the basis of the whole record, including the initial study and any comments received, that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration reflects the City Council's independent judgment and analysis. (CEQA Guidelines, Section 15074(b).)

In addition, the Department further recommends the City Council determine that based on the whole of the administrative record, the draft ordinance is exempt from CEQA pursuant to CEQA Guidelines, Section 15301 (Class 1), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. If the City Council concurs, it should adopt these findings prior to or concurrent with its action on the ordinance.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Building and Safety and the Los Angeles Police Department with a request that all comments, if any, be presented directly to the City Council or its Committee when this matter is considered.

If you have any questions regarding this matter, please contact Managing Senior Assistant City Attorney Terry Kaufmann Macias or Deputy City Attorney Adrienne Khorasanee. They or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney



By

DAVID MICHAELSON
Chief Assistant City Attorney

DM:ASK:mgm
Transmittal