



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: September 4, 2018

Agenda Item 9-B
Approvals: _____
City Manager [Signature]
Dept. Head [Signature]
Attorney _____
Finance [Signature]

Department: City Manager/Police Services
Prepared By: City Attorney

Subject: *AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING THE SAN CLEMENTE MUNICIPAL CODE, CHAPTER 9.04 TO PROHIBIT POSSESSION OF OPEN CONTAINERS OF ALCOHOL IN PUBLIC PLACES.*

Fiscal Impact: None.

Summary: Staff recommends the City Council consider an ordinance amending the San Clemente Municipal Code to prohibit the possession of open containers of alcohol in public places.

Background: The City, by virtue of the police powers delegated to it by the California Constitution, is authorized to adopt policies to promote the health, safety, and general welfare of its residents. This authority includes the regulation of certain disorderly conduct within the City.

Under California statute, possession of an open container of alcohol while driving is a crime. (Veh. Code, § 23222.) However, possession of an open container of alcohol in a public place is a crime only if the local jurisdiction adopted an ordinance prohibiting such activity. (Bus. & Prof. Code, 25620.)

Discussion: The proposed ordinance promotes health, safety, and general welfare by prohibiting possession of an open container of alcohol in a public place.

San Clemente Municipal Code, section 9.04.020 prohibits the following acts involving alcohol in a public place (e.g., public street, right-of-way, park, beach, pier, or public property): Consumption, sale, purchase, or giving away of alcohol.

This proposed ordinance would amend section 9.04.020 to also prohibit possession of an open container of alcohol in a public place.

Environmental Review: This action would not, in itself, in any way impact or alter the physical environment. Accordingly, this action is not a "project" under State CEQA Guidelines section 15378, and exempt from environmental review under State CEQA Guidelines section 15061(b)(3) (the general-rule exemption).

Recommended

Action: STAFF RECOMMENDS THAT the City Council introduce an ordinance amending the San Clemente Municipal Code to prohibit possession of open containers of alcohol in public places.

Attachments: 1. Ordinance.

Notification: Not applicable.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING THE SAN CLEMENTE MUNICIPAL CODE, CHAPTER 9.04 TO PROHIBIT POSSESSION OF OPEN CONTAINERS OF ALCOHOL IN PUBLIC PLACES.

WHEREAS, San Clemente Municipal Code, section 9.04.020 provides that “[n]o person shall consume, sell, purchase, or give away any alcoholic beverage on or upon any public place...;”

WHEREAS, possession of an open container of alcohol often a necessary element of activities prohibited by section 9.04.020;

WHEREAS, possession of an open container of alcohol in public places presents its own threats to public health, safety, and welfare, including, but not limited to, encouraging access to minors, public consumption of alcoholic beverages intoxication, and operating vehicles while under the influence;

WHEREAS, the City desires to amend the San Clemente Municipal Code to prohibit possession of an open container of alcohol in public places;

WHEREAS, California Business and Professions Code, section 25620 authorizes the City to enact and enforce an ordinance which prohibits possession of an open container of alcohol in public places; and

WHEREAS, the City, by virtue of the police powers delegated to it by the California Constitution, is authorized to adopt policies to promote the health, safety, and general welfare of its residents;

NOW, THEREFORE, the City Council of the City of San Clemente does ordain as follows:

Section 1. Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Chapter 9.04, Offenses Against Public Peace and Decency, Code Amendment. San Clemente Municipal Code title 9, Public Peace, Morals and Welfare, chapter 9.04, Offenses Against Public Peace and Decency, section 9.04.020, Consumption of Alcoholic Beverages in Public Places, is hereby amended as follows (additions shown in underline, deletions shown in ~~strikeout~~):

9.04.020 - Consumption of Alcoholic Beverages in Public Places

No person shall consume, sell, purchase, ~~or give away~~, or possess an open container that contains any alcoholic beverage on or upon any public place including any public street, right-of-way, park, beach, pier, or any public

property. The above notwithstanding, the City Council may, by resolution, grant exceptions to this prohibition for food establishments which have been licensed by the state to serve alcoholic beverages if the Council determines, in its sole discretion, that any such exception will not be contrary to the public health, safety, or welfare. Any such exceptions shall be subject to such conditions as the City Council deems necessary or convenient.

Section 3. Existing Code Provisions. All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 4. CEQA. The City Council finds that this ordinance is not subject to the requirements of California Environmental Quality Act ("CEQA") for the following reasons:

- A. This ordinance is not "project" within the meaning of section 15378 of the State CEQA Guidelines, because it has no potential for resulting in direct or indirect physical change in the environment.
- B. This Ordinance is exempt under section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this code amendment will have a significant effect on the environment.

The City Council, therefore, directs that a Notice of Exemption for this ordinance be filed with the County Clerk of the County of Orange in accordance with State CEQA Guidelines.

Section 5. Publication. The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

Section 6. Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at City Hall, 100 Avenida Presidio, San Clemente, CA 92672.

Section 7. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

APPROVED AND ADOPTED this ____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimately waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY