

AGENDA ITEM: 4.

DATE: 07-16-07

MEMORANDUM

AMENDMENT TO TITLE 17 - LANCASTER MUNICIPAL CODE ALCOHOL SALES ESTABLISHMENTS

DATE: July 16, 2007

TO: Lancaster Planning Commission

FROM: Planning Department

SUBJECT: Amendment of Title 17 of the City of Lancaster Municipal Code (Zoning Ordinance) revising the requirements for alcohol sales establishments through the addition of Chapter 17.42 and associated amendments within Chapters 17.12, 17.16, and 17.32

RECOMMENDATION: Approve Resolution No. 07-33 recommending to the City Council approval of an amendment to Title 17 of the Lancaster Municipal Code, revising the requirements for alcohol sales establishments.

BACKGROUND: The City originally adopted provisions related to the regulation of certain establishments that engage in the sale of alcohol in 1992. These provisions, which currently exist in Title 17 of the Municipal Code, require conditional use permits for certain on- and off-sale alcohol establishments, including bars, liquor stores, and mini-marts. These provisions also establish separate regulations for the operations of mini-marts.

ENVIRONMENTAL REVIEW: The proposed ordinance would generally apply to and regulate businesses within the City's commercial and industrial zones that sell alcoholic beverages. The ordinance would not alter any existing land use or zoning designations or locations within the City, therefore, the final environmental impact report adopted for the City's general plan would adequately describe the potential impacts from the enactment of such ordinance. Pursuant to Section 15162 of the State CEQA Guidelines, no additional environmental review is required; notice of such finding has been provided in the public notice published for this proposal.

ANALYSIS: The proposed ordinance would establish additional requirements regulating businesses within the City that engage in the sale of alcohol. The intent of the ordinance is to provide additional City scrutiny and regulatory authority over businesses that engage in the sale of alcohol, resolve a number of ambiguities that currently exist in the zoning ordinance with respect to alcohol sales establishments, and provide additional means to gain compliance from alcohol-related

businesses that violate operating conditions. A discussion of the major changes proposed under this ordinance is provided below:

Requirement for a Conditional Use Permit on all Establishments

The proposed ordinance would establish a conditional use permit requirement for all uses that engage in the sale of alcohol. This would include uses that currently do not require a conditional use permit for alcohol sales, including grocery stores, drug stores, and bona fide restaurants. Another significant change would be to extend these requirements into the industrial zones of the City, which currently only have limited requirements for conditional use permits for alcohol-related uses. The proposed ordinance distinguishes between and defines uses that are considered “incidental” establishments, in which alcohol sales constitute a small percentage of the overall floor area or amount of the business, and “primary” establishments, in which alcohol sales constitute a more significant part of the business. The difference between these types of uses is defined by either floor area or license type. In general, incidental establishments have a lesser requirement for distance separation from sensitive uses, while primary uses have a greater requirement.

Clarification of Definitions

The City’s current regulations require conditional use permits for “mini-marts” but not for grocery stores or such things as “ethnic food stores”. Quite often, the smaller grocery stores and other food stores engage in the off-site sale of alcoholic beverages. Staff has often been placed in the position of trying to determine whether a particular use is a “mini-mart”, thus triggering the conditional use permit requirement, or an “ethnic” or “specialty” food store, which does not require the conditional use permit. The proposed ordinance eliminates this ambiguous language, classifying any store of less than 10,000 square feet as a “convenience market” if it devotes at least 10 percent of its floor area to the sale of fresh meat and produce, and classifying it as a “mini-mart” if it does not. Convenience markets that sell alcohol would be considered either a primary or incidental off-site sales establishment, depending on the amount of floor area devoted to alcohol sales, while a mini-mart that sells alcohol is deemed to be a primary sales establishment. Mini-marts that do not sell alcohol would still be subject to the requirement for a conditional use permit but obviously would not fall under any of the alcohol-related provisions. As a part of the proposed ordinance, the separate provisions of Chapter V of Section 17.40, most of which establish certain conditions for the sale of alcohol, would be deleted and incorporated into new Chapter 17.42.

Revisions to Separation Distances

The current City code contains “guideline separation distances” that prescribe recommended separations between certain sensitive uses and alcohol sales establishments. These distances are intended as guidelines and are measured along public walking routes. The proposed ordinance would substantially revise these distances and also require that they be measured in a straight line between property lines. Since the proposed ordinance essentially expands the requirement for a conditional use permit to all alcohol sales establishments, staff evaluated whether certain types of uses should be exempt from the distance requirements. As shown on the tables under Section 17.42.040.A, the separation distances would not be applied to either bona fide restaurants or off-site incidental sales establishments. The effect of this would be that restaurants and uses such as supermarkets and drug stores, although required to obtain a conditional use permit, would not be required to maintain separation from certain uses. Staff’s reasoning on this is that these types of

uses rarely create the kinds of problems relative to alcohol sales that other primary uses (nightclubs, bars liquor stores, etc) sometimes do. Applicants adversely affected by the separation requirements would, under Section 17.42.040.C of the proposed ordinance, be entitled to request a waiver in conjunction with a conditional use permit application. This would allow the Commission to deal with individual situations where normal application of the distance requirements may create problems. Also, as part of the City's effort to encourage mixed use projects in certain areas, the separation distance requirements would not apply in those types of projects or districts (such as the downtown specific plan area).

Findings and Conditions

The proposed ordinance contains three mandatory findings in Section 17.42.050 that the Planning Commission must make in order to approve a conditional use permit. These findings require that the use is located in the proper zone, that it will not adversely affect nearby uses, and that it serves the public necessity and convenience. Section 17.42.060 lists those factors that can be considered in determining public necessity and convenience, including over-concentration, crime rate, and duplication of existing service, among others.

Conditions that would typically be imposed by the Planning Commission on both on-sale and off-sale alcohol establishments are contained within Sections 17.42.070 and 17.42.080. The intent of these sections is that all alcohol establishments should meet certain basic conditions for operation. The listing of these conditions would not prohibit the Commission from imposing additional or more stringent conditions should individual circumstances warrant such requirements.

Enforcement and Administration

The City's existing requirements establish some minimal requirements for correction of violations of conditional use permits issued for alcohol sales establishments. The proposed ordinance would strengthen this enforcement ability by establishing in Section 17.42.110 performance standards required of both existing "deemed approved" establishments (those in existence prior to the adoption of the ordinance) and those approved under the new ordinance. Violations of these performance standards would, under the ordinance, constitute a public nuisance that can be remedied through the provisions of the Lancaster Municipal Code related to public nuisance abatement. Further, violations by existing "deemed approved" alcohol establishments" can result in the City Council, through proper due process requirements, removing the "deemed approved" status of the existing establishment, thereby requiring it to comply with the revised alcohol ordinance. Standards are also set for lapse of "deemed approval" status by lack of operation or the revocation/transfer of the alcohol license (Section 17.42.130).

The draft ordinance was circulated to interested individuals and organizations, including the Chamber of Commerce, the Antelope Valley Building Industry Association, the Greater Antelope Valley Association of Realtors, and Raymond Chavira as representative of the Drug and Alcohol Policy Coalition, for a 45-day review period between April 11 and May 25, 2007. Staff received one comment from this review, which was to modify the separation distance requirement from public parks for primary alcohol establishments from 1,000 feet to 500 feet. This request was based on concern that the 1,000-foot distance requirement could adversely affect the placement of certain retail or entertainment uses within the developing commercial district proximate to Lancaster City

Park. Staff, upon review, concurred with the recommendation and the revised ordinance reflects this 500-foot distance requirement under Section 17.42.040.

One additional issue that has been raised by the development community is the effect that the proposed ordinance could have on restaurant projects that are currently approved as part of a commercial project and may begin the plan check process in the near future. In response to this concern, staff has prepared a draft policy for consideration by the Commission and Council to address specifically the issue of “in-progress” restaurants. The policy would establish a limited window of time for plan check drawings to be submitted for such restaurants and is contained as Attachment “B”.

In summary, staff believes the draft ordinance places reasonable controls on alcohol-related establishments that will address issues that have been identified since the current regulations went into effect in 1992. Further, these regulations would not, in staff’s view, adversely affect future commercial development in the City or unreasonably restrict the types of uses that the City wishes to encourage. Therefore, staff recommends that the Planning Commission approve the resolution recommending to the City Council approval of the alcohol ordinance.

BL/jr

Attachments: PC Resolution No. 07-33
 CC Ordinance
 Exhibit “A” – Alcoholic Beverage Establishments Draft Ordinance
 Exhibit “B” – In-Progress Bona Fide Restaurants Affected by Revised
 Alcohol Ordinance

RESOLUTION NO. 07-33

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LANCASTER, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE REGULATING THE ESTABLISHMENT AND OPERATION OF ALCOHOL ESTABLISHMENTS THROUGH THE ADDITION OF CHAPTER 17.42 TO THE MUNICIPAL CODE AND RELATED AMENDMENTS TO CHAPTERS 17.12, 17.16, 17.32, and 17.40.

WHEREAS, the Planning Commission of the City of Lancaster believes that there is a need for additional regulations related to alcohol sales establishments, as noted below in the findings; and

WHEREAS, notice of intention to consider this proposed ordinance has been give in accordance with the Lancaster Municipal Code and Section 65905 of the Government Code of the State of California; and

WHEREAS, staff has performed necessary investigations, prepared a written report, and recommended approval of the ordinance; and

WHEREAS, the Commission hereby finds that the proposed ordinance to implement these requirements will not result in any environmental impacts beyond those disclosed in the final environmental impact report prepared for the City of Lancaster General Plan, and further finds that, pursuant to Section 15162 of the State CEQA Guidelines, no further environmental review is required; and

WHEREAS, this Commission hereby adopts the following findings in support of approval of this application:

1. There is a need for adequate land use regulation related to alcohol sales establishments to reduce the potential for negative conduct in areas immediately surrounding such establishments; and
2. Various court decisions, including the *Floresta, Inc. vs. The City Council of the City of San Leandro* and *The Korean American Legal Advocacy Foundation vs. City of Los Angeles* have held that California cities may legitimately impose land use controls related to alcohol sales establishments, including the establishment of separation distances and geographic restrictions as to place of sale of alcohol; and,
3. There is a legitimate public purpose in adopting regulations that govern the manner in which alcohol sales establishments operate relative to the surrounding area, and for establishing mechanisms to abate nuisance conditions that may be caused by such operations to ensure the promotion of public health, safety, and welfare;

NOW, THEREFORE, BE IT RESOLVED:

This Commission hereby recommends to the City Council adoption of the proposed alcohol sales establishment ordinance as attached hereto.

PASSED, APPROVED and ADOPTED this 16th day of July, 2007, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

KENNETH G. MANN, Chairman
Lancaster Planning Commission

ATTEST:

BRIAN S. LUDICKE, Planning Director
City of Lancaster

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF LANCASTER
ADDING CHAPTER 17.42, ALCOHOLIC
BEVERAGE ESTABLISHMENTS, AND RELATED
AMENDMENTS TO CHAPTERS 17.12, 17.16, 17.32,
AND 17.40, TO THE LANCASTER MUNICIPAL
CODE**

WHEREAS, the City Council hereby finds that there is a need for adequate land use regulation related to alcohol sales establishments to reduce the potential for negative conduct in areas immediately surrounding such establishments; and

WHEREAS, various court decisions, including the *Floresta, Inc. vs. The City Council of the City of San Leandro* and *The Korean American Legal Advocacy Foundation vs. City of Los Angeles* have held that California cities may legitimately impose land use controls related to alcohol sales establishments, including the establishment of separation distances and geographic restrictions as to place of sale of alcohol; and

WHEREAS, there is a legitimate public purpose in adopting regulations that govern the manner in which alcohol sales establishments operate relative to the surrounding area, and for establishing mechanisms to abate nuisance conditions that may be caused by such operations to ensure the promotion of the public health, safety, and welfare; and,

WHEREAS, the City Council hereby finds that the proposed ordinance to implement this requirement will not result in any environmental impacts beyond those disclosed in the final environmental impact report prepared for the City of Lancaster General Plan, and further finds that, pursuant to Section 15162 of the State CEQA Guidelines, no further environmental review is required;

THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, DOES
HEREBY ORDAIN AS FOLLOWS:

Section 1. The Lancaster Municipal Code is hereby amended as provided in Exhibit "A", attached hereto.

Section 2. That the City Council finds that this Ordinance is consistent with the City's adopted General Plan.

Section 3. That the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

This Ordinance was introduced on _____, _____, and finally approved and adopted on _____, _____ by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

GERY K. BRYAN, CMC
City Clerk
City of Lancaster

HENRY HEARNS
Mayor
City of Lancaster



EXHIBIT "A"

**ALCOHOLIC BEVERAGE ESTABLISHMENTS
DRAFT ORDINANCE
July 2007**

1. Delete from Section 17.04.240 the following definitions:

“Bona fide restaurant”

“Liquor store”

“Mini-mart”

“New ABC licensed uses”

“Night club”

“Off-sale liquor establishments”

“On-sale liquor establishments”

2. Add to Section 17.04.240 the following definition:

“**Nightclub**” shall mean a place of entertainment, typically open at night, usually serving food and/or alcoholic beverages, which may have a floor show and/or offer live or recorded entertainment or music and/or space for dancing. A use that contains these operational characteristics shall be deemed a nightclub even if alcoholic beverages are not served.

3. Revise Section 17.08.070. EE. to read as follows:

EE. Wineries, requires a minimum of 2 net acres with a minimum of 25% of the site devoted active vineyard cultivation. Sales, dining, and tasting facilities incidental to such winery shall not be subject to the requirements of Chapter 17.42.

4. Amend Section 17.12.020 E. and M. to read as follows:

E. Eating and Drinking Establishments. This category includes but is not limited to restaurants, cafes, delicatessens, fast food operations, ice cream shops, and take-out food operations; any of which may include outdoor dining. Bars, bona fide restaurants, nightclubs, and other similar uses which meet the definition of an incidental or primary on-sale liquor establishment (as defined in Section 17.42.020) shall be required to obtain a conditional use permit.

M. Retail Sales Establishments. This category includes but is not limited to bona fide antique stores, apparel stores, appliance stores, bookstores (including used books), convenience stores (without alcohol sales), craft stores, computer stores, department stores, drugstores or food stores (without alcohol sales), gift shops, hardware stores, jewelry stores, telephone stores, discounted and wholesale/warehouse type stores, and similar retail sales operations.

This category does not include adult-oriented businesses, an incidental or primary off-sale liquor establishment as defined in Section 17.42.020, mini-marts, pawnshops, secondhand stores (does not include bona fide antique stores), surplus stores, and establishments engaged in the sale of heavy equipment, or establishments engaged in the sale of any item otherwise prohibited by law.

5. Delete Section 17.12.080.D.3 in its entirety and replace the with following:

3. Alcohol sales establishments as defined in and subject to the requirements of Section 17.42.020, including:

- a. Incidental off-site alcohol sales establishment
- b. Incidental on-site alcohol sales establishment
- c. Primary off-site alcohol sales establishment
- d. Primary on-site alcohol sales establishment
- e. Bona fide restaurant
- f. Liquor store
- g. Mini-mart with alcohol sales
- h. Nightclub with alcohol sales

6. Delete Section 17.12.080.C. in its entirety and replace with the following:

Entertainment and Recreation. This category includes but is not limited to amusement rides; bingo, billiard, dance, or pool halls; bowling alleys; card rooms; carnivals and circuses for longer than 10 days; golf driving ranges; miniature golf courses; night clubs; shooting ranges; skating rinks; all types of theaters; video game arcades, and similar uses.

7. Amend Section 17.12.080.D.11 to read as follows:

11. Mini-marts

8. Delete Section 17.12.260.B. and replace with the following:

B. Eating and Drinking Establishments. This category includes but is not limited to restaurants, cafes, delicatessens, fast food operations, ice cream shops, and take-out food operations; any of which may include outdoor dining. Bars, bona fide restaurants, nightclubs, and other similar uses which meet the definition of an incidental or primary on-sale liquor establishment (as defined in Section 17.42.020) shall be required to obtain a conditional use permit.

This category does not include adult-oriented businesses, an incidental or primary off-sale liquor establishment as defined in Section 17.42.020, mini-marts, pawnshops, secondhand stores (does not include bona fide antique stores), surplus stores, and establishments engaged in the sale of heavy equipment, or establishments engaged in the sale of any item otherwise prohibited by law.

9. Delete Section 17.12.260.I. and replace with the following.

I. Retail Sales Establishments. This category includes but is not limited to bona fide antique stores, apparel stores, appliance stores, bookstores (including used books), convenience stores (without alcohol sales), craft stores, computer stores, department stores,

drugstores or food stores (without alcohol sales), gift shops, hardware stores, jewelry stores, telephone stores, discounted and wholesale/warehouse type stores, and similar retail sales operations.

This category does not include adult-oriented businesses, an incidental or primary off-sale liquor establishment as defined in Section 17.42.020, mini-marts, pawnshops, secondhand stores (does not include bona fide antique stores), surplus stores, and establishments engaged in the sale of heavy equipment, or establishments engaged in the sale of any item otherwise prohibited by law.

10. Delete Section 17.12.300. E.1. and replace with the following:

1. Alcohol sales establishments as defined in and subject to the requirements of Section 17.42.020, including:

- a. Incidental off-site alcohol sales establishment
- b. Incidental on-site alcohol sales establishment
- c. Primary off-site alcohol sales establishment
- d. Primary on-site alcohol sales establishment
- e. Bona fide restaurant
- f. Liquor store
- g. Mini-mart with alcohol sales
- h. Nightclub with alcohol sales

11. Delete phrase “(convenience food store)” from Section 17.12.300.E.3.

12. Delete 17.12.730.B.2. in its entirety and replace with the following:

2. Eating and Drinking Establishments. This category is limited to: cafes, delicatessens, ice cream shops, and restaurants that are developed in conjunction with and located in the same building as office professional uses.

This category does not include fast food operations, bona fide restaurants, bars, cocktail lounges, nightclubs, or other uses that meet the definition of an on-site alcohol establishment. Freestanding eating and drinking establishments of any kind shall be subject to a conditional use permit.

13. Delete Section 17.12.760.A. in its entirety and replace with the following:

A. Freestanding eating and drinking establishments of any kind (excluding fast food operations), and bona fide restaurants and other similar uses that meet the definition of an on-site alcoholic beverage establishment, as defined by and subject to the requirements of Section 17.42, whether freestanding or combined with another use. Nightclubs are specifically prohibited.

14. Delete Section 17.12.920.C. in its entirety and replace with the following:

E. Eating and Drinking Establishments. This category includes but is not limited to restaurants, cafes, delicatessens, fast food operations, ice cream shops, and take-out food

operations; any of which may include outdoor dining. Bars, bona fide restaurants, nightclubs, and other similar uses which meet the definition of an incidental or primary on-sale liquor establishment (as defined in Section 17.42.020) shall be required to obtain a conditional use permit.

This category does not include adult-oriented businesses, an incidental or primary off-sale liquor establishment as defined in Section 17.42.020, mini-marts, pawnshops, secondhand stores (does not include bona fide antique stores), surplus stores, and establishments engaged in the sale of heavy equipment, or establishments engaged in the sale of any item otherwise prohibited by law.

15. Delete Selection 17.12.920.K and replace with following:

Section 17.12.020.M. Retail Sales Establishments. This category includes but is not limited to bona fide antique stores, apparel stores, appliance stores, bookstores (including used books), convenience stores (without alcohol sales), craft stores, computer stores, department stores, drugstores or food stores (without alcohol sales), gift shops, hardware stores, jewelry stores, telephone stores, discounted and wholesale/warehouse type stores, and similar retail sales operations.

This category does not include adult-oriented businesses, an incidental or primary off-sale liquor establishment as defined in Section 17.42.020, mini-marts, pawnshops, secondhand stores (does not include bona fide antique stores), surplus stores, and establishments engaged in the sale of heavy equipment, or establishments engaged in the sale of any item otherwise prohibited by law.

16. Add Section 17.12.945 Uses Subject to Permit:

A. Alcohol sales establishments as defined in and subject to the requirements of Section 17.42.020, including:

- a. Incidental off-site alcohol sales establishment
- b. Incidental on-site alcohol sales establishment
- c. Primary off-site alcohol sales establishment
- d. Primary on-site alcohol sales establishment
- e. Bona fide restaurant
- f. Liquor store
- g. Mini-mart with alcohol sales
- h. Nightclub with alcohol sales

B. Mini-marts

17. Revise Section 17.16.040.B.2. to read as follows:

Existing Conforming and New Commercial Uses. Such uses shall include but not be limited to animal hospital (veterinarian), answering service, banks, barber and beauty shops, dry cleaning, equipment rental, insurance, medical and dental offices, mobilehome sales, office supplies, real estate, restaurants, and similar uses, which are primarily intended to provide goods and services to the businesses and employees which are

located or expected to locate within the zone. Uses which meet the definition of an alcohol sales establishment as contained in Section 17.42.020 shall be required to obtain a conditional use permit.

18. **Delete Section 17.16.070.A.1. in its entirety and replace with the following:**
 1. Alcohol sales establishments as defined in and subject to the requirements of Section 17.42.020, including:
 - a. Incidental off-site alcohol sales establishment
 - b. Incidental on-site alcohol sales establishment
 - c. Primary off-site alcohol sales establishment
 - d. Primary on-site alcohol sales establishment
 - e. Bona fide restaurant
 - f. Liquor store
 - g. Mini-mart with alcohol sales
 - h. Nightclub with alcohol sales
19. **Add Section 17.16.070.A.5. as follows:**
 5. Mini-marts
20. **Delete Section 17.32.089.A.3. in its entirety and replace with the following:**
 3. Primary or incidental alcohol sales establishments as defined under Chapter 17.42.
21. **Add the following sentence to Section 17.32.190. to read as follows:**

This provision shall not apply to permits granted for alcohol sales establishments pursuant to Chapter 17.42, which shall be subject to the requirements of Section 17.42.130.
22. **Delete Article V of Chapter 17.40 in its entirety**
23. **Add Chapter 17.42 to read as follows:**

**CHAPTER 17.42
ALCOHOLIC BEVERAGE ESTABLISHMENTS**

Sections:

17.42.010	Purpose and Intent.
17.42.020	Definitions.
17.42.030	Conditional Use Permit Required.
17.42.040	Conditional Use Permit – Distance Requirements.
17.42.050	Conditional Use Permit – Findings.
17.42.060	Conditional Use Permit – Factors Regarding Public Convenience or Necessity.
17.42.070	Conditions of Approval for On-Sale Alcoholic Beverage Establishments.

- 17.42.080 Mandatory Conditions of Approval for Off-Sale Alcoholic Beverage Establishments.**
- 17.42.090 Exceptions-Specific Plan Areas**
- 17.42.100 Existing Establishments Selling Alcoholic Beverages.**
- 17.42.110 Performance Standards to Prevent Public Nuisance.**
- 17.42.120 Administrative Review of Conditional Use Permits.**
- 17.42.130 Expiration, Discontinuance, and Revocation.**
- 17.42.140 Violation and Penalty.**
- 17.42.150 Severability.**

17.42.010 Purpose and Intent.

The purpose of adopting regulations for the sale of alcoholic beverages is to ensure that such sales will not adversely affect surrounding residents, businesses, and institutions; and to ensure that any such use operates in a manner compatible with existing and future adjacent uses.

This Chapter alone does not allow or permit alcoholic beverage establishments, but only applies to such establishments where otherwise allowed or permitted within an involved applicable land use zoning district. This Chapter does not authorize the operation of alcoholic beverage establishments in any land use district where they are not otherwise allowed or permitted by the applicable involved zoning district's regulations.

17.42.020 Definitions.

For the purpose of this Chapter, the following words or terms shall be defined as follows:

“Alcoholic beverage” shall mean a fermented or distilled beverage including alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer which contains one-half of one percent or more of alcohol by volume which is fit for beverage purposes, either alone or when diluted with other substances, and sale of which require a license from the state Department of Alcoholic Beverage Control (ABC).

“Alcoholic Beverage Control (ABC)” shall mean the California State Department of Alcoholic Beverage Control.

“Alcoholic beverage establishment” shall mean any or all of the following: a bona fide restaurant, an incidental off-sale alcoholic beverage establishment, an incidental on-sale alcoholic beverage establishment, a primary off-sale alcoholic beverage establishment, and a primary on-sale beverage establishment.

“Bona fide restaurant” shall mean a business enterprise which is conducted, or proposed to be conducted, in compliance with the following requirements:

- A. The issuance by ABC of a Type 41 or a Type 47 license;

B. A kitchen and a dining area that constitute permanent and identifiable portions of the business premises;

C. A printed menu which is provided to patrons by a server for the purpose of ordering meals;

D. Not less than fifty-one percent of the business enterprise is derived from the sale of food and non-alcoholic beverages;

E. At least one full-time cook is engaged by the business enterprise to prepare meals for patrons on the premises during the permissible hours of operation.

Fast food restaurants, billiard or pool halls, nightclubs, and adult-oriented businesses are not considered bona fide restaurants.

“**Convenience market**” shall mean any business establishment of less than 10,000 square feet not connected with a petroleum products service-station, and which is characterized by retail sales of food products and household items, and which devote a minimum of ten percent of overall floor area to display and sale of fresh meat and produce.

“**Entertainment**” shall mean any form of entertainment, whether live, televised audio or video taped, including, but not limited to, any type of performance for the purpose of amusing the audience, such as: dancing, singing, playing a musical instrument or acting.

“**Existing deemed approved alcoholic beverage establishment**” shall mean any establishment lawfully engaged in the sale of alcoholic beverages for on or off-sale consumption which is in existence prior to the effective date of this Chapter, retains the same type of alcoholic beverage license and continues to legally operate without substantial change in the mode or character of operation.

“**Fast food restaurant**” shall mean a restaurant whose business is primarily related to take out food. Customers typically order food from a menu board. A fast food restaurant may also have a drive-through window.

“**Grocery store**” shall mean any business establishment selling food products, household merchandise, and/or drugs to the public which has a floor area of more than 10,000 square feet.

“**Incidental alcoholic beverage establishments**” shall mean incidental off-sale alcoholic beverage establishments and incidental on-sale alcoholic beverage establishments.

“**Incidental off-sale alcoholic beverage establishment**” shall mean those establishments that both: (1) sell, serve or give away alcoholic beverages for consumption off the premises; and (2) utilize no more than the square footage provided in the table below for the sale and display of alcoholic beverages for consumption off the premises.

Size of Outlets	Maximum square footage of gross floor area and shelf area for sale, and display of alcoholic beverages
0 to 100,000 gross square feet of total floor area	Up to 10% or 5,000 square feet, whichever is less
Greater than 100,000 gross square feet of total floor area	Up to 5% or 7,500 square feet, whichever is less

“**Incidental on-sale alcoholic beverage establishment**” shall mean those establishments that both: (1) sell, serve or give away alcoholic beverages for consumption on the premises; and (2) utilize ten percent or less of the gross floor area for the sale, display and storage of alcoholic beverages for consumption on the premises. Without limitation, this definition includes a hotel that maintains only a Type 70 Alcoholic Beverage License, and a hospital which maintains only a Type 63 Alcoholic Beverage License. For purposes of this article, a bona fide restaurant shall not be considered an incidental On-Sale Alcoholic Beverage Establishment.

“**Liquor Store**” shall mean a retail or wholesale establishment which as obtained an alcoholic beverage control license Type 21 (off-sale general) to engage in the sale or sealed or containerized alcoholic beverages wherein the sale of alcoholic beverages constitutes 51% or more of the establishment’s gross financial receipts.

“**Mini-mart**” shall mean a retail establishment which contains less than 10,000 square feet of gross floor area utilized in whole or in part for the sale of a variety of items including groceries, delicatessen items, staples, dairy products, pre-packaged food, soft drinks, sundry items, and/or alcoholic beverages, and may include the sale of gasoline or other petroleum products. “Mini-mart” is distinguished from a “convenience market” in that it does not devote at least ten percent of its overall floor area to the display and sale of fresh meat and produce. Any mini-mart that sells alcoholic beverages shall be deemed a primary alcoholic beverage establishment.

“**Mixed-use development**” shall mean a building or combination of buildings intentionally designed as a single development to accommodate a combination of residential and commercial uses.

“**Mixed-use district**” shall mean any physical location designated by the City of Lancaster general plan or zoning map as a mixed-use district.

“**Nightclub**” shall mean a place of entertainment, typically open at night, usually serving food and/or alcoholic beverages, which may have a floor show and/or offer live or recorded entertainment or music and/or space for dancing.

“**Planning Commission**” shall mean the Planning Commission of the City of Lancaster.

“Primary off-sale alcoholic beverage establishment” shall mean any business establishment which is making application for or which has obtained a liquor license from ABC authorizing the sale of alcoholic beverages for consumption off the premises in original, unopened containers, and which exceeds the amount of floor area devoted to alcoholic beverage sales area as defined under “incidental off-sale alcoholic beverage establishment”. For the purposes of this Chapter, liquor stores and mini-markets shall be deemed primary off-sale alcoholic beverage establishments.

“Primary on-sale alcoholic beverage establishment” shall mean any business establishment which is making application for or which has obtained a liquor license from ABC authorizing the sale of alcoholic beverages for consumption on the premises. Such liquor licenses include, but are not limited to, Type 41 (on-sale beer and wine for bona fide public eating place), Type 42 (on-sale beer and wine for public premises), Type 47 (on-sale general for bona fide public eating place), Type 48 (on-sale general for public premises), Type 50 (on-sale general for club), Type 51 (club), and Type 52 (veteran’s club). For the purposes of this Chapter, bona fide restaurants, nightclubs, bars, and banquet facilities, which sell alcoholic beverages for on-site consumption, shall be deemed primary on-sale alcoholic beverage establishments.

“Substantial change in mode or character of operation” shall include, but is not limited to, the following situations:

- A. The alcoholic beverage establishment has changed, or proposes to change, its type of retail liquor license with the Department of Alcoholic Beverage Control;
- B. An alcoholic beverage establishment increases floor area by more than twenty percent;
- C. An alcoholic beverage establishment changes from an “incidental off-sale” or an “incidental on-sale” establishment to a “primary off-sale” or a “primary on-sale” establishment.
- D. The alcoholic beverage establishment proposes to reinstate alcohol sales after the retail liquor license has been revoked or suspended for a period greater than ninety days by the Department of Alcoholic Beverage Control; or
- E. The establishment is a bona fide restaurant with a Type 41 or Type 47 license that adds entertainment, except for non-amplified solo or similar entertainment on an occasional basis, which does not occupy more than 50 square feet or substantially change the character of the restaurant operation.

“Supermarket” shall mean any business establishment selling food products, household merchandise, and/or drugs to the public, which has a floor area of more than 10,000 square feet.

17.42.030 Conditional Use Permit Required.

On or after the effective date of this Chapter, no place where alcoholic beverages are sold, served, or given away as a normal course of business for on-sale or off-sale consumption, shall be established without first obtaining a conditional use permit from the City of Lancaster. No existing deemed approved alcoholic beverage establishment shall substantially change its mode or character of operation as such term is defined by this Chapter, without first obtaining a conditional use permit.

Issuance of a conditional use permit shall be in accordance with the requirements set forth in Chapter 17.32 of this code and the requirements of this Chapter (except for wineries approved pursuant to Section 17.08.070.EE of the Lancaster Municipal Code). The Planning Commission shall approve, conditionally approve, or disapprove an application for a conditional use permit for alcoholic beverage establishments. Following a public hearing at which all parties may present testimony, the Planning Commission shall state findings of fact, which serve as the basis of its decision, and record the decision in writing.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment, and be presented to City of Lancaster or Los Angeles County Sheriff’s personnel upon request.

17.42.040 Conditional Use Permit – Distance Requirements.

A. New alcoholic beverage establishments shall adhere to the distance requirements as specified below:

PRIMARY ALCOHOLIC BEVERAGE ESTABLISHMENTS			
Type of Establishment	On-Sale	Off-Sale	Bona Fide Restaurant
Religious Assembly	300’	300’	-0-
Public/Private School (K-12)	1,000’	1,000’	-0-
Day Care Center	300’	300’	-0-
Residential Use or Residentially Designated Property	300’	300’	-0-
Existing Primary Alcoholic Beverage Establishment	500’	500’	-0-
Public Park	500’	500’	-0-
Hospital	500’	500’	-0-

INCIDENTAL ALCOHOLIC BEVERAGE ESTABLISHMENTS		
Type of Establishment	On-Sale	Off-Sale
Religious Assembly	300'	-0-
Public/Private School (K-12)	500'	-0-
Day Care Center	500'	-0-
Residential Use or Residentially Designated Property	300'	-0-
Existing Primary Alcoholic Beverage Establishment	300'	-0-
Public Park	500'	-0-
Hospital	500'	-0-

B. Measurement of Distance. The distance requirement shall be measured in a straight line from the closest property line to the closest property line.

C. Request for Waiver. An applicant for an alcoholic beverage establishment may request, in conjunction with the conditional use permit, a waiver of the distance requirements. In considering such request, the Planning Commission may approve a waiver if it makes the following findings:

1. The alcoholic beverage establishment will serve a specific community need.
2. The distance waiver approved for the alcoholic beverage establishment is not expected to result in an adverse effect on adjacent property, uses or residents.

D. Exceptions to Distance Requirements. The distance requirements shall not be applicable to an alcoholic beverage establishment located within a mixed use development or a mixed use district.

17.42.050 Conditional Use Permit – Findings.

In order to approve a conditional use permit for an alcoholic beverage establishment, the Planning Commission, or City Council on appeal, shall find that the proposed use is consistent with the purpose and intent of this Chapter. In addition, the Planning Commission, or the City Council on appeal, shall make the following findings as well as the findings required by Section 17.32.090:

A. That the proposed use will be located within a zone which permits alcoholic beverages to be sold, served, or given away for on-sale or off-sale consumption, as the case may be, upon obtaining a conditional use permit;

B. That the proposed use will not adversely affect nearby residents and facilities primarily devoted to use by children, families, and the general public, after giving consideration to the distance or proximity of the proposed alcoholic beverage establishment to residential districts, schools (public or private), day care centers, public parks, playgrounds and other recreational facilities, churches or other places of religious worship, hospitals, clinics or other health care facilities; and

C. That the proposed use serves the public convenience and necessity based upon all factors outlined in Section 17.42.060.

17.42.060 Conditional Use Permit – Factors Regarding Public Convenience or Necessity.

In deciding whether to issue the conditional use permit, the Planning Commission, or the City Council on appeal, shall consider whether the public convenience or necessity is being served and make findings to justify such conclusion based upon review and consideration of relevant factors, which shall include, but not limited to, the following:

A. The extent to which the issuance of the conditional use permit would duplicate services and, therefore, contribute to an over-concentration of alcoholic beverage establishment;

B. The extent to which alcohol sales are related to the function of the proposed use, and the possibility of the use operating in a viable manner without alcohol sales;

C. The ability of the proposed establishment to serve a niche in the market not filled by other alcoholic beverage establishment in the area;

D. The convenience of purchasing alcoholic beverages in conjunction with other specialty food sales or services;

E. The aesthetic character and ambiance of the proposed establishment;

F. The manner in which the proposed establishment is to be conducted (special or unique features), including the extent to which the establishment will provide an adequate and well trained staff;

G. The manner in which the proposed establishment complements the established or proposed businesses in a specific area;

H. The extent to which the proposed establishment, location and/or operator has a history of law enforcement problems;

I. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the city; and

J. The number of alcohol-related law enforcement calls for service, crimes or arrests in the reporting district and in adjacent districts.

17.42.070 Conditions of Approval for On-Sale Alcoholic Beverage Establishments.

Establishments engaged in the retail sale of alcoholic beverages for on-premises consumption shall be operated in a manner which does not interfere with the normal use of adjacent properties. In addition to those conditions which the Planning Commission, or the City Council on appeal, may otherwise impose, all conditional use permits for on-sale beverage establishments shall be subject to the following conditions of approval:

A. The exterior of the premises shall be kept free of litter.

B. Graffiti shall be removed from the site within 24 hours.

C. Alcoholic beverages shall not be permitted to be consumed in the parking area or other exterior areas of the premises, except for designated outdoor areas approved as part of the application.

D. Exterior lighting of the parking area shall be kept at an intensity of between one and two-foot candles, so as to provide adequate lighting for patrons while not disturbing surrounding residential or commercial areas. Light sources shall be screened from the adjacent properties and from the sky.

E. Adequate security measures shall be provided as specified by the Planning Commission including, but not limited to, retaining trained staff and security personnel and providing security devices, such as surveillance or burglar alarm systems.

F. Hours of operation, including deliveries to the proposed establishment, shall be compatible with the need and character of the surrounding neighborhood. In order to protect the public health, safety and welfare, the Planning Commission may limit the hours of operation.

G. All employees who serve or sell alcoholic beverages shall successfully complete a responsible beverage service training within 90 days of hire. Records of such training shall be maintained on the premises and made available to City of Lancaster or Los Angeles County Sheriff's personnel upon request.

H. Noise levels at the property line of any sensitive use as listed in Section 17.24.040 adjoining the site of the alcoholic beverage establishment shall not exceed 65 dBA.

I. The management of any establishment selling alcohol shall take necessary steps to assure the orderly conduct of employees, patrons and visitors on the premises.

J. The owner of the establishment shall maintain all required permits and/or licenses for the sale of alcoholic beverages in good standing.

K. The establishment shall conspicuously post an interior sign stating: “We ID everyone under 30 years of age for alcohol sales.” The language of such sign shall be English, as well as the predominant language of the establishment’s clientele.

17.42.080 Conditions of Approval for Off-Sale Alcoholic Beverage Establishments.

Establishments engaged in the retail sale of alcoholic beverages for off-premises consumption shall operate in a manner which does not interfere with the normal use of adjacent properties. In addition to those conditions which the Planning Commission, or the City Council on appeal, may otherwise impose, all conditional use permits for off-sale alcoholic beverage establishment shall be subjected to the following mandatory conditions of approval:

- A. The exterior of the premises shall be kept free of litter.
- B. Graffiti shall be removed from the site within 24 hours.
- C. The sale of alcoholic beverages for consumption on premises shall be prohibited and appropriate posting of signs stating that drinking on the premises is prohibited by law shall be posted both inside and outside the establishment. The premises shall include the establishment proper and/or the appurtenant common area if located in a commercial center..
- D. Exterior lighting of the parking area shall be kept at an intensity of between one and two-foot candles, so as to provide adequate lighting for patrons while not disturbing surrounding residential or commercial areas. Light sources shall be screened from the adjacent properties and from the sky.
- E. Adequate security measures shall be provided as specified by the Planning Commission including, but not limited to, retaining trained staff and security personnel and providing security devices, such as surveillance or burglar alarm systems.
- F. Hours of operation, including deliveries to the proposed establishment, shall be compatible with the need and character of the surrounding neighborhood. In order to protect the public health, safety and welfare, the Planning Commission may limit the hours or operation.
- G. All employees who serve or sell alcoholic beverages shall successfully complete a responsible beverage service training within 90 days of hire. Records of such training shall be maintained on the premises and made available to the City of Lancaster or the Los Angeles County Sheriff’s Department personnel upon request.
- H. Noise levels at the property line of any sensitive use as listed in Section 17.42.040 adjoining the site of the alcoholic beverage establishment shall not exceed 65 dBA.

I. Exterior public telephones that permit incoming calls may not be located on the premises.

J. The operation of video or any other electronic games may be prohibited in conjunction with the sale of alcoholic beverages, and will be considered on a case by case basis.

K. The Planning Commission may restrict alcoholic beverages sales by container size and type where such restriction is determined to be necessary for the reasonable protection of public health and safety.

L. No beer or wine shall be displayed within 5 feet of the cash register or the front door unless it is in a permanently affixed cooler.

M. No sale of alcoholic beverages shall be made from a drive-through window.

N. No display or sale of beer or wine shall be made from an ice tub.

O. No self-illuminated advertising for beer or wine shall be located on buildings or windows, or be visible from outside the building.

P. If the establishment also engages in the sale of motor vehicle fuel, no advertisement of alcoholic beverages shall be displayed at motor fuel islands.

17.42.090 Exceptions-Specific Plan Areas.

The requirements of this Chapter shall not apply to areas of the City for which a specific plan has been adopted pursuant to Section 65450 of the Government Code of the State of California if the adopted specific plan contains regulations regarding alcoholic beverage establishments.

17.42.100 Existing Establishments Selling Alcoholic Beverages.

Any establishment lawfully existing prior to the effective date of this Chapter and licensed by the State of California for the retail sale of alcoholic beverages for on-sale or off-sale consumption shall be considered as a “deemed approved alcoholic beverage establishment” and shall only be required to obtain a conditional use permit for a “substantial change in mode or character of operation” as described in Section 17.42.020, a loss of “deemed approved” status as provided under Section 17.42.110, or a discontinuance as provided under Section 17.42.130. The distance requirements set forth in Section 17.42.040 shall not apply to any existing deemed approved alcoholic beverage establishment.

17.42.110 Performance Standards to Prevent Public Nuisance.

Any on-sale or off-sale alcoholic beverage establishment with a conditional use permit or any existing establishments having a “deemed approved” status shall comply with the following performance standards. The purpose of these standards is to control dangerous or objectionable environmental effects of alcoholic beverage sales, and to protect the public

health, safety and welfare. Any on-sale or off-sale alcoholic beverage establishment with a conditional use permit or deemed approved status is subject to citation for public nuisance as defined in the Lancaster Municipal Code and the California Penal Code. In addition, pursuant to Section 17.42.130 any conditional use permit shall be subject to amendment, modification or revocation, and in the case of existing establishments, loss of the “deemed approved” status, if any of the following is found to exist:

- A. Activities within the premises or in close proximity of the premises which constitute a nuisance under any section of the Lancaster Municipal Code.
- B. Where the operation of the premises is in violation of any applicable city ordinance or state or federal regulation or statute.
- C. Failure to comply with any condition imposed in the issuance of a conditional use permit.

17.42.120 Administrative Review of Conditional Use Permits.

The City reserves the right to review the conditional use permit (CUP) one year from the date the CUP was first approved and at one-year intervals thereafter. After reviewing the existing manner and conditions of operation of the permitted business establishment, the Planning Commission may add, amend or delete any conditions of approval based upon changed circumstances, which necessitate a modification to the conditions of approval. The Planning Commission’s determination shall be final and binding on the business operator unless appealed to the City Council pursuant to the provisions of Chapter 2.44 of the Lancaster Municipal Code.

17.42.130 Expiration, Discontinuance, and Revocation.

- A. A conditional use permit for an alcoholic beverage establishment shall lapse if the use is discontinued for ninety (90) consecutive days, or if the establishment’s Alcoholic Beverage Control license has been revoked or transferred to another location.
- B. A “deemed approved” alcoholic beverage establishment shall lapse if the use is discontinued for ninety (90) consecutive days.
- C. In the case of an existing approved conditional use permit for an alcoholic beverage establishment, the Planning Commission may set a public hearing to consider revocation of said conditional use permit for noncompliance with the performance standards as set forth in Section 17.42.110.
- D. In the case of a “deemed approved” alcoholic beverage establishment, the City Council may set a hearing, in accordance with due process requirements, to consider removal of the “deemed approved” status of said establishment for noncompliance with the performance standards as set forth in Section 17.42.110.

17.42.140 Violation and Penalty.

A. Violations of this Chapter shall constitute a misdemeanor and shall be punishable in the manner provided in Section 1.12.020(A).

B. Any use of property contrary to the provisions of this title shall be and the same is declared to be unlawful and a public nuisance. The City Attorney or the District Attorney may, in addition to or in lieu of prosecution in a criminal action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps, and shall apply to such other courts or court as may have jurisdiction to grant such relief as will abate or remove such alcoholic beverage establishments, and restrain and enjoin any person from using property contrary to the provisions of this Chapter.

C. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

17. 42.150 Severability.

If any part or provision of this Chapter is found to be invalid or unenforceable by a court of law, such invalidity shall not affect any other part or provision herein, and all remaining provisions of this Chapter will be valid and enforceable to the fullest extent permitted by law.

EXHIBIT “B”

PROPOSED CITY COUNCIL POLICY In-Progress Bona Fide Restaurants Affected by Revised Alcohol Ordinance

Background

At the direction of City Council, the Planning Department has prepared a draft alcohol ordinance that, if adopted, would substantially revise the City’s existing alcohol requirements. This draft ordinance was been circulated for comment to various community organizations, including the Greater Antelope Valley Association of Realtors, the Chamber of Commerce, and the Drug and Alcohol Policy Coalition. Staff received minimal comment on the ordinance, therefore, it is reasonable to assume that some form of this ordinance will likely be adopted by the City Council. The draft ordinance is scheduled to be reviewed by the Planning Commission in July 2007 and the City Council in August 2007.

Currently, the City’s zoning code requires a conditional use permit for certain defined alcohol-related uses, such as liquor stores, mini-marts, and bars. The proposed ordinance would extend the conditional use permit requirement to include bona fide restaurants, supermarkets, and drug stores. Currently, these uses do not require conditional use permits to sell alcohol.

Questions have been raised regarding the effect of the proposed ordinance on the City’s efforts to attract bona fide restaurants, given that most restaurants do sell some form of alcohol. Staff does not believe that restaurant uses will be greatly affected, since the requirement for a conditional use permit in conjunction with alcohol sales is a common requirement in many cities. However, there may be proposed bona fide restaurants with existing approvals or those going through the plan check process that could be adversely affected.

Purpose

The purpose of this policy is to provide a consistent method of dealing with approved or “in progress” bona fide restaurants that would be adversely affected by the adoption of a revised alcohol ordinance. This policy is intended to provide a reasonable time period for such bona fide restaurants to submit construction drawings and complete other work necessary to establish their operation.

Statement of Policy

Bona fide restaurants that are approved or “in-progress” as of the effective date of the City of Lancaster’s revised alcohol ordinance shall not be subject to requirement for a conditional use permit, subject to the following criteria:

1. The restaurant shall meet the definition of a bona fide restaurant as contained in the proposed revised alcohol ordinance (see attached sheet).

PROPOSED CITY COUNCIL POLICY
In-Progress Bona Fide Restaurants Affected by Revised Alcohol Ordinance

2. The bona fide restaurant shall, on the effective date of the ordinance:
 - Be specifically approved (denoted as a restaurant) on a site through the appropriate City process (site plan review, conditional use permit, or director’s review); and,
 - Have submitted construction plans for plan check no later than 60 days following the effective date of the revised alcohol ordinance.
3. This exemption from the requirement for a conditional use permit shall also apply to bona fide restaurants that submit tenant improvement plans for existing buildings within 60 days of the effective date of the revised alcohol ordinance.
4. All bona fide restaurants that do not submit construction plans or tenant improvement plans within 60 days of the effective date of the revised alcohol ordinance shall be subject to the conditional use permit requirement.

Definition of Bona Fide Restaurant

“**Bona fide restaurant**” shall mean a business enterprise which is conducted, or proposed to be conducted, in compliance with the following requirements:

- A. The issuance by ABC of a Type 41 or a Type 47 license;
- B. A kitchen and a dining area that constitute permanent and identifiable portions of the business premises;
- C. A printed menu which is provided to patrons by a server for the purpose of ordering meals;
- D. Not less than fifty-one percent of the business enterprise is derived from the sale of food and non-alcoholic beverages;
- E. At least one full-time cook is engaged by the business enterprise to prepare meals for patrons on the premises during the permissible hours of operation.

Fast food restaurants, billiard or pool halls, nightclubs, and adult-oriented businesses are not considered bona fide restaurants.