

COUNCIL MEETING
July 18, 2006

Honorable Mayor and Members
of the Torrance City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Recommendation of the Chief of Police that City Council amend sections of the Torrance Municipal Code relating to the public consumption and open alcoholic beverage containers

Expenditure: Not applicable

RECOMMENDATION

The Chief of Police recommends that the City Council adopt an Urgency Ordinance repealing Sections 49.2.6, 45.4.2, 44.3.15, 45.4.8, and 45.4.9 of the Torrance Municipal Code, and adding new Sections 49.2.6, 45.4.2, 44.3.15, 45.4.8, and 45.4.9 of the Torrance Municipal Code, relating to the public consumption and possession of open alcoholic beverage containers. The Police Chief further recommends that the City Council approve the attached summary of the ordinance for publication.

BACKGROUND / ANALYSIS

As a chartered city under the provisions Article XI, Section 11, of the California Constitution, the City of Torrance has the power to "make and enforce within its limits all such local, police, and sanitary and other regulations as are not in conflict with general laws."

Article XX, Section 22 of the California Constitution provides that "the State of California ... shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State." The language of this section by its own terms preempts local regulation of the manufacture, sale, purchase, possession, and transportation of such beverages. The State of California has not preempted the local regulation of alcohol consumption. The courts have found that consumption of alcoholic beverages in public could constitute a social evil and a police problem and therefore, have upheld local ordinances prohibiting the consumption of alcohol in public. (*See, People v. Butler* (1967) 252 Cal.App.2d Supp. 1053 and *People v. Brewer* (1991) 235 Cal.App.3d 909).

The State of California has given cities some regulatory authority over the possession of open containers containing alcoholic beverages. Business and Professions Code section 25620 provides that it is unlawful for any person to possess an open container containing an alcoholic beverage in any city park or city owned public place if a

city adopted an ordinance. Further, Penal Code section 647e provides that a city may provide by ordinance that no person in possession of an open container containing an alcoholic beverage shall remain on the posted premises, including the posted parking lot or on any public sidewalk adjacent to the licensed and posted premises.

The proposed ordinance will amend the sections of the Torrance Municipal Code dealing with the public possession and consumption of alcoholic beverages, for the purpose of prohibiting both the consumption of alcoholic beverages and the possession of open containers of alcoholic beverages in public places.

Respectfully submitted,


James D. Herren
Chief of Police

CONCUR:


John L. Fellows III
City Attorney


LeRoy J. Jackson
City Manager

Attachment

URGENCY ORDINANCE NO. _____

SUMMARY

On _____, 2006, the City Council of the City of Torrance adopted Urgency Ordinance No. _____ a new ordinance relating to consumption of alcohol and possession of open alcoholic beverage containers.

Section 49.2.6(a) provides that no person shall consume any alcoholic beverage at any time in any City park. Any person who violates this section will be guilty of a misdemeanor. Section 49.2.6(b) provides that no person shall possess an open container containing any alcoholic beverage at any time in any City park. Any person who violates this section will be guilty of an infraction.

Section 45.4.2 provides that it is unlawful for a person to consume any alcoholic beverage upon any public street, sidewalk, alley, pool area, airport, or in any public place, place open to the public, public building, public rest room, or public parking structure or lot. Any person who violates this section will be guilty of a misdemeanor.

Section 44.3.15(a) provides that a person shall not enter, be or remain on any beach while consuming an alcoholic beverage. Any person who violates this section will be guilty of a misdemeanor. Section 44.3.15(b) provides that a person shall not enter, be or remain on any beach while in possession of an open container of any alcoholic beverage. Any person who violates this section will be guilty of an infraction.

Section 45.4.8 provides that it is unlawful for a person to possess an open container containing any alcoholic beverage to enter, be, or remain on the posted premises of, including the posted parking lot immediately adjacent to, any retail off-sale alcoholic beverage licensee or on any public sidewalk immediately adjacent to the licensed and posted premises. Any person who violates this section will be guilty of an infraction.

Section 45.4.9 provides that every person owning or operating a business licensed for the retail off-sale of packaged alcoholic beverages shall post and maintain a sign not less than 17 inches by 22 inches in size with lettering not less than one inch in height visible to the patrons of the business, the adjacent parking lot, and to persons on the public sidewalk setting forth the prohibitions listed in Section 45.4.8. Any person who violates this section will be guilty of a misdemeanor.

The ordinance shall take effect immediately upon its passage.

*****City Clerk to add a paragraph stating that copies of the ordinance are available at the City Clerk's office and stating the names of the City Council members that voted in favor and those that voted against.*****

URGENCY ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF TORRANCE AMENDING SECTIONS OF
THE TORRANCE MUNICIPAL CODE RELATING TO
CONSUMPTION OF ALCOHOL AND POSSESSION OF
OPEN ALCOHOLIC BEVERAGE CONTAINERS**

The City Council of the City of Torrance does ordain as follows:

SECTION 1

Sections 49.2.6, 45.4.2, 44.3.15, 45.4.8, and 45.4.9 of the Torrance Municipal Code are repealed.

SECTION 2

A new Section 49.2.6 of the Torrance Municipal code is added, to read in its entirety as follows:

“SECTION 49.2.6 CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES

- (a) No person shall consume any alcoholic beverage at any time in any City park. This section shall not apply where the consumption is within premises for which a permit has been issued by the Director as provided in Article 3.
- (b) No person shall possess any bottle, can or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, at any time in any City park. This section shall not apply where the possession is within premises for which a permit has been issued by the Director as provided in Article 3 or where the possession is solely for the purpose of recycling.
- (c) Any person violating subsection (a) will be guilty of a misdemeanor.
- (d) Any person violating subsection (b) will be guilty of an infraction as provided in Section 25620 of the California Business and Professions Code.”

SECTION 3

A new Section 45.4.2 of the Torrance Municipal Code is added, to read in its entirety as follows:

“SECTION 45.4.2 ALCOHOL CONSUMPTION IN PUBLIC PLACES

- (a) It shall be unlawful for any person to consume any alcoholic beverage upon any public street, sidewalk, alley, pool area, airport, or in any public place, place open to the public, public building, public rest room, or public parking structure or lot, except where permitted by license from the State or pursuant

to a temporary permit issued by the City. The provisions of this section shall apply to any person whether on foot, in a vehicle, or otherwise.

- (b) Subsection (a) shall not apply to the City-owned Cultural Arts Center complex, buildings, and garden when a person is attending an event where a temporary permit has been issued by the City.”

SECTION 4

A new Section 44.3.15 of the Torrance Municipal Code is added, to read in its entirety as follows:

“SECTION 44.3.15 ALCOHOLIC BEVERAGES

- (a) A person shall not enter, be or remain on any beach while consuming an alcoholic beverage.
- (b) A person shall not enter, be or remain on any beach while in possession of any bottle, can or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.
- (c) Any person violating subsection (a) will be guilty of a misdemeanor.
- (d) Any person violating subsection (b) will be guilty of an infraction as provided in Section 25620 of the California Business and Professions Code.”

SECTION 5

A new Section 45.4.8 of the Torrance Municipal Code is added, to read in its entirety as follows:

“SECTION 45.4.8 POSSESSION OF OPENED ALCOHOLIC BEVERAGE CONTAINER ON POSTED PREMISES OF OFF-SALE ALCOHOLIC BEVERAGE LICENSEE PROHIBITED

- (a) It shall be unlawful for any person to possess any bottle, can or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, to enter, be, or remain on the posted premises of, including the posted parking lot immediately adjacent to, any retail package off-sale alcoholic beverage licensee licensed pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code, or on any public sidewalk immediately adjacent to the licensed and posted premises.
- (b) The provisions of subsection (a) shall not apply to a private residential parking lot immediately adjacent to the posted premises.
- (c) Any person violating subsection (a) will be guilty of an infraction.”

SECTION 6

A new Section 45.4.9 of the Torrance Municipal Code is added, to read in its entirety as follows:

“SECTION 45.4.9 POSTING OF PREMISES LICENSED FOR THE RETAIL OFF-SALE OF PACKAGED ALCOHOLIC BEVERAGES

- (a) Every person owning or operating a business licensed for the retail off-sale of packaged alcoholic beverages pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code shall post and maintain a sign not less than seventeen inches by twenty-two inches in size with lettering not less than one inch in height visible to the patrons of such business, the adjacent parking lot, and to persons on the public sidewalk setting forth the prohibitions contained in Section 45.4.8.”

SECTION 7

Any inconsistent provisions of the Torrance Municipal Code, or any other inconsistent ordinances of the City, are repealed, to the extent of the inconsistencies.

SECTION 8

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portion of this Ordinance. The City Council of the City of Torrance hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or other portions might subsequently be declared invalid or unconstitutional.

SECTION 9

This ordinance is an alcohol consumption and possession ordinance adopted as an urgency measure pursuant to Torrance City Charter Section 726 and Government Code Section 36937(b) for the immediate preservation of the public peace, health or safety by prohibiting open alcoholic beverage containers and the consumption of alcohol.

The City Council hereby finds that there is a current and immediate threat to the public health, safety and welfare resulting from any lapse in time of the regulation of alcohol consumption and possession on public property, and that the absence of such regulation would result in a threat to public health, safety and welfare, for the following reasons:

- a. The absence of regulation of alcohol consumption and possession for 30 days would result in disorderly conduct in public places, including city parks, streets, sidewalks, etc.
- b. Alcohol consumption and possession impairs the person's facilities and his or her ability to act cautiously around others, which poses a danger to citizens enjoying public resources, especially children.
- c. Alcohol consumption and possession creates an unpredictable atmosphere and would require closer monitoring, which would usurp valuable city resources.

SECTION 10

a. This Ordinance shall take effect immediately upon its passage.

b. The City Clerk is authorized and directed to publish this Ordinance or a summary of this Ordinance, if authorized by the City Council, before the expiration of fifteen days after its passage. This Ordinance shall be published once, with the names of the City Council members voting for and against it, in at least one newspaper of general circulation published in the City of Torrance, State of California.

PASSED AND ADOPTED by the City Council of the City of Torrance, State of California on this _____ day of _____, 2006.

Mayor of the City of Torrance

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By: _____
Ronald T. Pohl
Assistant City Attorney