



**DATE:** July 28, 2022

**TO:** Council Economic Development Committee

**FROM:** Acting Development Services Director

**SUBJECT:** Strategic Roadmap Priority: Update to the Alcoholic Beverage Ordinance

### **RECOMMENDATION**

That the Council Economic Development Committee (CEDC) reviews the report and provides feedback to City staff on the items for consideration at the July 28, 2022 CEDC meeting.

### **SUMMARY**

When the City Council adopted its Strategic Roadmap Priorities for 2022, one of the priorities identified was to have staff look into possible revisions to the City's Alcoholic Beverage Outlets (ABO) Ordinance ([Hayward Municipal Code Section 10-1.2750](#)) to better support existing full-service restaurants and encourage more new restaurants to open in the City. In preparation for this update, staff conducted outreach to various stakeholders to solicit input on possible amendments to the ABO Ordinance that could help address the City Council's priority and also potentially attract an alcoholic beverage manufacturing facility having a food service component such as a brewpub to the City as well. To date, staff has received very little feedback from these outreach efforts, suggesting that the ABO Ordinance is not acting as a significant deterrent to growth in the City's full-service restaurant industry. Nevertheless, staff has identified some potential amendments to the ABO Ordinance, which may help address the Council's priority.

### **BACKGROUND**

On January 28, 2020, the City Council adopted its FY 2021-23 Strategic Roadmap. The Roadmap identified six strategic priorities for staff to work on over its 3-year lifespan, one of which was to "Grow the Economy." Included as one of the five projects under this priority was a call to invest in programs that support Hayward businesses and workers. One of the efforts identified under this particular project calls for "revising the alcohol use regulations to support existing and encourage more full-service restaurants" in Year 3 of the Roadmap's lifespan. Staff from the Planning Division began working with the Police Department and Economic Development Division on this effort in early 2022 to identify possible changes to the ABO Ordinance that could be supported by all departments. Staff subsequently began

conducting outreach to key stakeholders during the spring in an attempt to solicit feedback on the topic before bringing the item to the CEDC.

## **DISCUSSION**

### Summary of Outreach Efforts to Date

In April of this year, Planning Division staff interviewed former Chamber of Commerce president, Kim Huggett, and Downtown Hayward Improvement Association District Manager Dominic Mandri to obtain their input and determine whether their memberships had raised any significant issues with the City's existing regulations governing alcohol sales at restaurants. Neither Mr. Huggett nor Mr. Mandri had received any complaints regarding the current regulations, and neither had any strong opinions for how the City could potentially change them to help existing restaurants improve their business and entice new restaurants to locate in Hayward. Both of them did, however, feel that the City should revise the ABO Ordinance to relax the current requirement that full service restaurants must maintain at least 60 percent of their gross revenues from the sale of food with only 40 percent allowed to be derived from the sale of alcohol. Mr. Huggett, in particular, felt that this was an unrealistic requirement and one that was too difficult to enforce. He felt that a ratio of 50:50 for revenues from food sales to alcohol sales was more reasonable, and more in line with other agencies' requirements, such as the State Department of Alcoholic Beverage Control (ABC). Historically, the ABC considered establishments that met the 50:50 ratio to be "bona fide eating places" and allowed families with children and minors to patronize them since they functioned as restaurants rather than bars by providing full food service in addition to alcohol service.

In late April, staff also collaborated with the Chamber to circulate a flyer to its membership inviting anyone interested to offer opinions on the subject. The flyer was emailed to all 1,200 members and 341 members viewed the email, equating to a 36 percent viewing rate. In response to this effort, Planning staff was contacted by one individual, the owner of the Dirty Bird Lounge, Aric Yeverino. Finally, the Chamber also published a small article with the same invitation in its May newsletter. No additional responses were received in response to this article.

Planning staff interviewed Mr. Yeverino in early June. He felt strongly that the current 60:40 ratio was too strict and very difficult for any restaurant offering a full bar to comply with given how expensive alcoholic beverages such as premium wines and cocktails can be. He felt that relaxing this standard would reduce anxiety experienced by restaurant owners like himself who do a significant amount of business selling alcohol in addition to food, and his preference would be to eliminate the ratio altogether. Mr. Yeverino also expressed a desire to revise the ABO Ordinance to allow alcohol-serving establishments that contain a full kitchen and lease/sublease it to a food service provider through a business partnership to be considered as full-service restaurants under the ABO Ordinance. Under such an arrangement, one individual could own the bar and kitchen but lease/sublease the kitchen to a chef who would run the food service component using a separate point of sale, thus enabling the establishment to operate like a full-service restaurant even though it would technically house two separate businesses. This practice is currently allowed by the ABC, as long as the kitchen remains open up until 30 minutes prior to the bar's closing time.

In May, staff contacted the owners/operators of two East Bay microbreweries who had recently expressed interest in locating in Hayward, one located in Danville and the other in Alameda. Like Mr. Yeverino, the owner/operator of the Alameda-based microbrewery also said that it would help if the City changed the ABO Ordinance to allow a microbrewery to install a kitchen but lease it out to a food service provider rather than have to hire its own food service staff. According to both operators, it can be difficult for individuals who are in the business of producing and/or selling alcohol to try to run a food service in the establishment as well since they may have no experience running a restaurant. The owner/operator of the Danville-based microbrewery did not have any comments specific to the current alcohol regulations but did suggest that the City should consider changing its industrial land use regulations to allow microbreweries as permitted uses rather than requiring them to obtain conditional use permits.

Finally, in early July, staff sent an email to a list of nearly 110 local restaurant owners maintained by the Economic Development Division notifying them of this CEDC meeting and inviting them to contact Planning staff for more information. The City's Community & Media Relations Division also published an article in the July edition of The Stack inviting the public to participate in the CEDC meeting and ran a Stack Extra with the article on the City's website on July 11 as well. Staff was subsequently contacted by the owner of Casa del Toro and the local Metro Taquero restaurants, Alejandro Gamarra. Mr. Gamarra felt that allowing restaurants to offer longer "happy hours" with earlier start times could help them increase business and better cover their expenses, but that was his only suggestion.

In response to the Stack Extra article, one member of the public also contacted staff and opposed making any amendments to the current regulations because she felt it would result in an overall increase in alcohol consumption and the problems often associated with it, such as drunk driving.

#### Possible Amendments to the ABO Ordinance

##### ***Relaxing the Required 60:40 Ratio of Food Sales to Alcohol Sales:***

Section 10-1.2751(i) of the ABO Ordinance currently defines a "full service restaurant" as follows:

A "full service restaurant" means a sit-down alcoholic beverage sales establishment which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records

pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon seventy-two (72) hours' prior written notice. Full-service restaurants may operate without a conditional use permit, provided that the restaurant observes the performance standards set forth in Section 10-1.2752 and meets the following criteria.

- (1) A full service restaurant shall serve meals to guests at all times the establishment is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
- (2) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
- (3) A full service restaurant may offer live or recorded music until midnight without a cabaret license or permit, provided the music is within the parameters established by the City's Noise Ordinance. Dancing or other form of live entertainment besides music is not allowed unless a conditional use permit and a cabaret license or permit is obtained, in accordance with Chapter 6, Article 2 of this code. The right to have live or recorded music in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.
- (4) A full service restaurant may offer reduced price alcoholic beverages served on the premises between the hours of 4:00 p.m. and 9:00 p.m., provided that such beverages are offered in conjunction with reduced price appetizers and reduced price non-alcoholic beverages. The right to have reduced price alcoholic beverages in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.

This definition affords full service restaurant operators many benefits by allowing them to offer a full bar on the premises, "happy hour" discount pricing, and live or recorded music up until midnight, all without requiring any discretionary approvals from City staff, the Planning Commission, or the City Council. However, as stated in the "Summary of Outreach Efforts to Date" section, above, some of the stakeholders who provided input did feel that the current requirement to maintain a minimum of 60 percent of gross receipts from food sales was very difficult to comply with, particularly for establishments that offer premium cocktails and wine.

Staff agrees that this standard is somewhat high and that it could be relaxed. As such, one potential change that may help increase business at existing restaurants and entice new restaurants to open in the City could be to reduce the 60:40 ratio to 50:50. This would be consistent with how the ABC has historically defined bona-fide eating places apart from bars and would ensure that a significant amount of business at each establishment continues to be derived from food sales.

***Allow Different Bar/Restaurant Operators on Same Premises:***

Another potential change to the definition, and one that was also suggested by various stakeholders during the outreach process, could be to allow the owner of an establishment that sells alcohol and has a full-service kitchen to lease the kitchen out to a food service provider through a business partnership, and still allow this type of venture to be considered a full-service restaurant. This would enable an individual or company that is in the alcohol sales/production business, including owners of bars, microbreweries, wineries, or distilleries, to meet the ABO Ordinance's definition of a full-service restaurant by providing an on-site, full-service kitchen to an individual or company that is in the food service business and who could provide that service to the establishment's clientele. The establishment would be able to function like a bar and grill, brewpub, winery, or distillery and be afforded all of the benefits that the ABO Ordinance provides full-service restaurants, even though it would technically house two separate businesses. This change to the definition could be effective at enticing alcohol-oriented businesses such as microbreweries and wineries to Hayward by giving their owners who often do not have experience running restaurants the ability to find a food service provider to run the kitchen and handle the food service component of the business.

The definition could also be further modified to allow the kitchen to either be constructed within the actual establishment or as a freestanding onsite structure that is anchored to the ground and connected to all necessary utilities such as water and sewer. The City recently awarded an Oakland-based business, Arthur Mac's Tap & Snack, a financial assistance incentive to proceed with a concept for a full-service restaurant with outdoor beer garden on a vacant lot at 1060 B Street in which the kitchen and bar will both be housed in shipping containers that will be modified and outfitted with cooking facilities, alcohol-serving facilities, and restroom facilities. As such, a precedent for this type of full-service restaurant layout has already been established; the only change to the definition necessary would be to allow the kitchen and food service to be operated by a separate entity from the alcohol serving establishment.

If the definition is changed to allow these types of arrangements, then to ensure that an establishment utilizing such an arrangement maintains the food service component at all times while alcohol is served, staff advises that it only be allowed to operate under one of three specific types of ABC liquor licenses: a Type 41 license; Type 47 license; or Type 75 license. All three of these licenses require the establishment to operate as a restaurant (or bona fide eating place) as opposed to a bar, with meal service provided up until 30 minutes prior to closing time. The Type 41 license only allows for the sale of beer and wine with meals, while the Type 47 license allows for the sale of beer, wine, and spirits with meals, and a Type 75 license allows for the sale of beer, wine, and spirits with meals as well as a limited amount of onsite beer brewing. If a holder of one of these types of licenses is found to not be operating as a bona fide eating place, then the ABC could take enforcement action or even revoke its license if necessary. This ability to enforce on ABC's part would be effective at ensuring the establishment maintains the food service component as part of its everyday operations.

***Extend Happy Hour Discount Pricing Times:***

Another potential change to the definition suggested by one stakeholder could be to extend the hours when a full-service restaurant is allowed to offer discount (happy hour) pricing for alcoholic beverages. It was suggested that the happy hour start time could be moved up from

4:00 PM to 2:00 PM to enable restaurants to capture more business from people who work earlier shifts and finish in the early afternoon. Staff believes that the current hours of 4:00 to 9:00 are adequate as is. However, if the CEDC wishes to move up the start time to an earlier time in response to the suggestion, then staff recommends that the end time be made earlier as well. For instance, if the definition is changed to allow discount pricing to start at 2:00 instead of 4:00, then staff recommends that the end time be changed from 9:00 to 7:00 as well. Additionally, the current requirement that discounted appetizers and non-alcoholic beverages be offered in conjunction with discounted alcoholic beverages should remain in effect during any new hours.

### **Questions for CEDC Members**

Staff would like to obtain feedback from the CEDC regarding the possible amendments and offers the following questions for discussion:

1. Should the required ratio of food sales to alcohol sales for full-service restaurants currently prescribed by the ABO Ordinance be relaxed from 60:40 to 50:50?
2. Should the definition of full-service restaurant contained in the ABO Ordinance be revised to allow partnerships between alcoholic beverage outlet operators and kitchen/food service operators in a single establishment to qualify as one?
3. Should the City allow freestanding kitchens (such as the Arthur Mac's example cited above) built on the same premises as an alcohol beverage outlet and operated by a separate food service operator to satisfy the requirement for a full-service kitchen for the purposes of defining the outlet as a full-service restaurant?
4. Should the City extend the hours when a full-service restaurant is allowed to offer discount pricing for alcoholic beverages?

### **NEXT STEPS**

Following feedback from the CEDC, staff will prepare draft amendments to the ABO Ordinance for consideration by the Planning Commission and City Council. All amendments to Chapter 10 of the Municipal Code require a recommendation from the Planning Commission, followed by introduction of the draft amended ordinance(s) by the City Council at a first hearing, and, ultimately, adoption of the ordinance by the Council at a subsequent hearing. Staff expects to be able to present the draft amendments to the Commission and Council this Fall.

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