



City of Sunnyvale

Memorandum

To: Honorable Mayor and City Councilmembers

From: Gary Luebbbers, City Manager 

Through: Hanson Hom, Director of Community Development 

Date: March 9, 2010

Re: Follow-up to Council Study Issue: Limitations on Signage for Alcohol Sales (RTC 09-281)

Background

On November 17, 2009, the City Council made zoning code amendments as part of a study to determine methods for minimizing the impact of the sale of alcohol on school-aged children. The Council adopted an ordinance amendment to the Zoning Code that prohibits newly defined liquor stores within 200 feet of a public school site in the C-1, Neighborhood Commercial zoning district.

One of the options discussed in the Report to Council was to create an amortization program to gradually phase out liquor stores near schools. That program was not included in the Council action because of the time and cost associated with implementing such a program, and because of the limited number of sites that would be affected. Council requested staff to return with more information on the impacts to business on possible amortization programs.

The concept of amortization is to allow the owner of a non-conforming use to operate that use for the period of time necessary to give the owner the opportunity to recover their investment. At the end of that amortization period, the owner is forced to conform to the provisions of the zoning ordinance (i.e. to terminate the non-conforming use).

The City does not currently have any amortization programs in place, nor is staff aware of such a program being used by the City in the past. The Sunnyvale Municipal Code addresses existing structures and uses as legal non-conforming. This section of the code allows non-conforming using that

were legally established to continue to operate—unless there is a discontinuation of that use for a year or more.

There are two businesses that could be affected by an amortization program as described in this memo (liquor stores within 200 feet of Fremont High School and to Bishop Elementary School).

Amortization Programs

An amortization program would eliminate existing non-conforming liquor stores. Such a program would compel property and business owners to change the property use within a specified time period. Amortization is a technique for removing non-conforming uses after the value of a non-conforming use has been recovered- or amortized- over a period of time. Some cities include amortization standards as part of the zoning regulations.

Property owners do not acquire a constitutionally protected right in property uses once they have commenced, nor is there a protection in zoning designations once they are made. One of the objectives of zoning regulations is to ultimately eliminate non-conforming uses. Zoning laws can require termination of non-conforming uses under reasonable conditions (usually an amortization period).

Courts have held that the validity of an amortization technique need not depend on exact compensation for all economic loss. In order to be a *reasonable* exercise of the police power, the termination process must mitigate the private loss by allowing the owner a reasonable period to recoup the investment in the non-conforming use. Staff has examined examples of amortization periods for non-conforming uses (e.g. check cashing stores, adult businesses, grocery stores), and notes that they vary from one to five to twenty years.

An owner's actual investment is a valid basis for determining unrecoverable costs. It is also necessary to consider the cost of replacement premises in calculating the owner's unrecoverable costs, but this can also be factored in to adjust the base value after it is determined.

An amortization program does not need to fully compensate a property owner for all actual and potential opportunity costs, such as future profit potential. It is merely a way of cushioning the economic blow that would be experienced by the private owner to compel the operation to cease. Courts have held that the owner of a nonconforming use may be required to accept some loss upon termination of the business. It is recognized that, as the benefit to the public from amortization increases, the owner's loss may also increase.

Once the value of the use has been amortized, compensation need not be payable after the expiration of the period.

The advantage of an amortization program is that it would assure liquor stores near public school sites would be eliminated by a definitive future date. Without such a program, it is possible that these uses may never vacate the site. With an amortization program, compliance could be achieved in a shorter period established by the City Council.

There are drawbacks to implementing such a program. Amortization would obviously place a significant burden on property owners and businesses. It may also require significant staff time and City resources to implement due to practical and legal concerns as described below.

Fiscal Impact

If an amortization program were adopted, substantial staff hours would be required and a fiscal impact to the City would result. It is difficult to determine the full cost of an amortization program for liquor stores. All uses within 200 feet of a public school site would need to be thoroughly examined to determine if they meet the new definition for a "liquor store." Also, staff would contact affected property and business owners, prepare the necessary legal documents, and return to Council for final action. Staff estimates that such a program could require significant staff hours considering the introduction of an ordinance, implementation and possible legal challenges. Because of the legal uncertainties, it is not possible to know the cost of implementing this program, but it can be estimated to exceed 200 hours.

If the City Council chooses to adopt an amortization program for liquor stores located in C-1 zoning districts, and within 200 feet of a public school site, a source of funding (or a change in policy or study issue priorities) is needed for additional staff hours to implement the program and to complete zoning code amendments. Although there are only one or two businesses affected, the issues related to an amortization program could be significant, including potential legal challenges.

Recommendation

Considering the significant anticipated cost to the City, staff does not recommend preparing an amortization program for liquor stores. While such a requirement would ultimately result in fewer liquor stores in locations frequented by school-aged children, it would be a significant departure from current City policies, and potentially an expensive option.

Cc: Trudi Ryan, Planning Officer
Andrew Miner, Project Planner