

CITY OF YUBA CITY
STAFF REPORT

Date: August 18, 2009
To: Honorable Mayor & Members of the City Council
From: Community Development Department
Presentation By: Aaron M. Busch, Community Development Director

Summary

Subject: An extension of time for the Interim Urgency Ordinance enacting new definitions and development standards/restrictions for "eating and drinking establishments", "bars and drinking places", and "nightclubs" within the City's Zoning Code and *Central City Specific Plan*.

Recommendation: Conduct a public hearing to adopt an extension of time for the Interim Urgency Ordinance that enacts new definitions and development standards/restrictions for "eating and drinking establishments", "bars and drinking places", and "nightclubs" within the City's Zoning Code and *Central City Specific Plan* as shown on Exhibit A.

Fiscal Impact: None.

Background:

On August 5, 2008, the City Council approved a proposed Interim Urgency Ordinance that temporarily enacted new definitions and development standards/restrictions for "eating and drinking establishments", "bars and drinking places", and "nightclubs" within the City's Zoning Code and *Central City Specific Plan*. The purpose for the approval of the interim urgency ordinance was to correct an existing deficiency in the City's Zoning Code as well as the *Central City Specific Plan*. Presently there are no clear definitions or standards/restrictions in either City code to distinguish between restaurants, bars, and nightclubs. As a result, it is challenging for the City to regulate where and how these different uses are allowed to operate which can create potential conflicts within a surrounding area. The urgency ordinance temporarily allows the City to ensure that no other businesses are allowed to open and operate without the City first being able to adequately review the potential issues and conflicts that could arise with a proposed bar or nightclub through the Use Permit process.

Urgency ordinances of this type are authorized by Government Code Section 65858 which allows a city to adopt as an urgency measure, an interim ordinance prohibiting a use that may be in conflict with a general plan, specific plan, or zoning proposal that a city is considering. Ordinances of this type require a 4/5 vote are initially valid for 45 days, but can be extended by another 4/5 vote by the Council. The Council approved such an extension at their September 16, 2008 meeting. If

necessary, the interim ordinance can be extended for one additional year pursuant to Section 65858(a) with a 4/5 vote.

Analysis:

Staff anticipated incorporating the changes to the City's Zoning Ordinance and *Central City Specific Plan* that are the subject of the interim ordinance as part of the comprehensive update to the subject specific plan document. Completion of that update was originally targeted for earlier this year, however, scope of work changes have caused delays with the original schedule. Staff has refined the scope of work for the update into multiple phases with the first phase expected to be completed by the end of this year. The changes to the Zoning Ordinance and *Central City Specific Plan* that are the subject of the interim ordinance will be included as part of that first phase update. Once the planned amendments to the Zoning Ordinance and *Central City Specific Plan* are complete, the need for the interim ordinance will be eliminated.

Fiscal Impact:

There is no fiscal impact associated with the proposed urgency ordinance.

Alternatives:

Do not extend the interim urgency ordinance and allow the ordinance to expire.

Recommendation:

Conduct a public hearing to adopt an extension of time for an Interim Urgency Ordinance that enacts new definitions and development standards/restrictions for "eating and drinking establishments", "bars and drinking places", and "nightclubs" within the City's Zoning Code and *Central City Specific Plan* as shown on Exhibit A.

Prepared By:



Aaron M. Busch
Community Development Director

Submitted By:



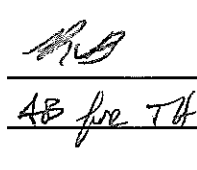
Steven R. Jepsen
City Manager

Reviewed By:

Finance

City Attorney

Other: (Name, Title)



Exhibits

A. Interim Urgency Ordinance

ORDINANCE NO. _____

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF YUBA CITY EXTENDING
THE ENACTMENT OF NEW DEFINITIONS AND DEVELOPMENT
STANDARDS/RESTRICTIONS FOR “EATING AND DRINKING ESTABLISHMENTS”,
“BARS AND DRINKING PLACES”, AND “NIGHTCLUBS”**

THE CITY COUNCIL OF THE CITY OF YUBA CITY DOES ORDAIN AS FOLLOWS:

WHEREAS, under the current City of Yuba City's Zoning Code and *Central City Specific Plan* there is no clear distinction between eating and drinking establishments; bars and drinking places; and, nightclub use types; and,

WHEREAS, in order to address community concerns regarding the location of bars and drinking establishments and nightclub uses and the potential for public safety and nuisance impacts including: noise; parking and traffic; public disturbances and loitering, new development standards are necessary; and,

WHEREAS, the City of Yuba City wishes to ensure that the character of existing neighborhoods is preserved and local business viability is maximized and that by not providing a clear means to differentiate between among dining, drinking, and nightclub use types, there is a potential to adversely impact the aesthetic and business climate of the surrounding neighborhood or city as a whole; and,

WHEREAS, there is concern that the city does not have sufficient definitions and development standards in place that can prevent an existing eating and drinking establishment business from expanding into a nightclub use that could be incompatible with surrounding properties without a formal public review process; and,

WHEREAS, pursuant to Section 65858 of the California Government Code, to protect the public safety, health, and welfare, a City Council may adopt as an urgency measure an interim ordinance prohibiting land uses that may be in conflict with a contemplated General Plan, Specific Plan, or Zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and,

WHEREAS, the City Council of the City of Yuba City wishes to implement new development standards for bars and drinking places and nightclubs that ensures compatibility between these use types and surrounding land uses within the city so that the public health, safety, or welfare, is protected, and the market values and aesthetic and visual qualities of the city are protected from impairment.

WHEREAS, on August 5, 2008 the City Council adopted Ordinance No. 006-08

entitled "An Interim Urgency Ordinance of the City of Yuba City Enacting New Definitions And Development Standards/Restrictions For "Eating And Drinking Establishments", "Bars And Drinking Places", And "Nightclubs" which Ordinance expires 45 days from the date of its adoption, pursuant to the requirements of Government Code Section 65858; and

WHEREAS, on September 16, 2008, the City Council held a duly noticed public hearing to extend the interim urgency ordinance in compliance with Government Code Section 65858(a).

WHEREAS, on August 18, 2009, the City Council held another duly noticed public hearing to consider extending the interim urgency ordinance for a period of one year in compliance with Government Code Section 65858(a).

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF YUBA CITY DOES ORDAIN AS FOLLOWS:

Section 1: Finding, Declaration of Urgency

The City Council of the City of Yuba City hereby finds and declares that there is a need to enact an interim urgency ordinance establishing new definitions and development standards for "eating and drinking establishments", "bars and drinking places" and "nightclubs" within the *Central City Specific Plan* and citywide. The City of Yuba City does not have adequate standards in the City's Zoning Code or the *Central City Specific Plan* related to the distinction between restaurants, bars, and nightclubs or the location, operation and concentration of these different business types within the City. Without specific definitions and development standards/restrictions, bars and nightclub uses could be allowed wherever restaurants are permitted which could have potential adverse effects on surrounding areas because they might be established in areas that would conflict with the requirements of the General Plan; result in potential public safety and nuisance impacts including: noise, parking and traffic; public disturbances and loitering; be inconsistent with surrounding uses and potentially adversely impact the aesthetic and business climate of the surrounding area, and present a clear and immediate threat to the public health, safety, and welfare. Failure to enact this urgency ordinance may result in irreversible change to the character of the applicable zoning districts. Based on the foregoing, the City Council does hereby declare this urgency ordinance is necessary to protect the public health, safety, and welfare while considering revisions to the Zoning Code and *Central City Specific Plan* related to restaurants, bars, and nightclubs.

Section 2: Chapter 8 of the *Central City Specific Plan* is hereby amended to incorporate the following provisions:

"Development Standards & Design Guidelines" Section 1 Land Use; A. Permitted Ground Level Uses is hereby revised to delete the following reference as a permitted ground level use: "Bars and Nightclubs – including establishments providing entertainment or permitting dancing, and establishments serving alcoholic beverages not ancillary to food

service”; and,

“Development Standards & Design Guidelines” Section 1 Land Use; A. Permitted Ground Level Uses is hereby revised to add the following reference as a permitted ground level use: “Eating and drinking establishments – full service restaurant” – includes establishments primarily engaged in the preparation and retail sale of food and beverages, where food is ordered and served at a table, and which may include sales of alcoholic beverages as an accessory or secondary service. A full service restaurant does not include a place where food service is incidental to the service of alcoholic beverages, constituting less than 60 percent of sales. Upon request by City officials, the owner/operator of a business shall submit evidence of total food service sales to the City to verify compliance with this definition. In the event that it is determined that food service is less than 60 percent, the subject business/use shall be considered a “bar and drinking place” as defined in Section 1. For purposes of this chapter, to the extent that a restaurant is open after 11:00 p.m. on Sundays through Thursdays and/or after 12:00 a.m. on Fridays and Saturdays and is incorporating any components of “entertainment” as defined herein, the restaurant shall be considered a nightclub and a Use Permit shall be required.

“Development Standards & Design Guidelines” Section 1 Land Use; D. Conditionally Permitted Ground Level Uses is hereby added and includes the following provisions:

“Bars and drinking places” – includes establishments within a building where alcoholic beverages are sold for on-site consumption, that are not a part of a restaurant. Includes bars, sports bars, taverns, pubs, brew pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages.

“Nightclubs” – includes establishments or places of entertainment within a building, open primarily at night, usually but not necessarily serving alcohol, and providing amplified live or recorded music and/or a space reserved dancing. Does not include adult entertainment businesses which are prohibited. Nightclub uses shall not be located within 500 feet of a residential zone district as measured from the residential zone district boundary to the structure where the nightclub use is proposed.

Section 3: Yuba City Zoning Ordinance, Article 80. Definitions, is hereby amended to include the following modifications:

Section 8-5.8004(a) is added as follows: “Bars and drinking places” – includes establishments within a building where alcoholic beverages are sold for on-site consumption, that are not a part of a restaurant. Includes bars, sport bars, taverns, pubs, brew pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages.

Section 8-5.8020(a) is added as follows: “Eating and drinking establishments – full service restaurant” – includes establishments primarily engaged in the preparation and retail sale of food and beverages, where food is ordered and served at a table, and which may include sales of alcoholic beverages as an accessory or secondary service. A full service restaurant does not include a place where food service is incidental to the service

of alcoholic beverages, constituting less than 60 percent of sales. Upon request by City officials, the owner/operator of a business shall submit evidence of total food service sales to the City to verify compliance with this definition. In the event that it is determined that food service is less than 60 percent, the subject business/use shall be considered a “bar and drinking place” as defined in Section 8-5.8004(a). For purposes of this chapter, to the extent that a restaurant is open after 11:00 p.m. on Sundays through Thursdays and/or after 12:00 a.m. on Fridays and Saturdays and is incorporating any components of “entertainment” as defined herein, the restaurant shall be considered a nightclub and a Use Permit shall be required.

Section 8-5.8040(a) is added as follows: “Nightclubs” – includes establishments or places of entertainment within a building, open primarily at night, usually but not necessarily serving alcohol, and providing amplified live or recorded music, and/or a space reserved for dancing. Does not include adult entertainment businesses which are prohibited. Nightclub uses shall not be located within 500 feet of a residential zone district as measured from the residential zone district boundary to the structure where the nightclub use is proposed.

Section 4: Articles 13 and 14 of the Yuba City Zoning Ordinance are hereby amended to include the following modifications:

Section 8-5.1302. “C-2 Uses” is modified so that “Bars and drinking places” and “Nightclubs” require a Use Permit in the C-2 zone district. Additionally, note number 8 shall be added to the above referenced section which states that: “Nightclub uses shall not be located within 500 feet of a residential zone district as measured from the residential zone district boundary to the structure where the nightclub use is proposed.”

Section 8-5.1402. “C-3 Uses” is modified so that “Bars and drinking places” is a Permitted Use in the C-3 zone district and “Nightclubs” requires a Use Permit in the C-3 zone district. Additionally, note number 7 shall be added to the above referenced section which states that: “Nightclub uses shall not be located within 500 feet of a residential zone district as measured from the residential zone district boundary to the structure where the nightclub use is proposed.”

Section 5: Severability

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6: CEQA

The City Council hereby determines that this ordinance is exempt from

environmental review under the California Environmental Quality Act because it can be seen with certainty it will not have a significant effect on the environment. (CEQA Guideline 15061(b)(3).)

Section 7: Effective Date

This Ordinance is hereby declared an urgency ordinance measure for the immediate preservation of the public health, safety and welfare and is adopted pursuant to Government Code Section 65858 and shall take effect immediately. The provisions of this Ordinance as previously adopted by Ordinance No. 006-08 are hereby extended for a period of one additional year.

Section 8: Term of Ordinance

This ordinance shall be in effect for a period of one additional year and shall be of no further force and effect after August 5, 2010. No additional extensions shall be allowed pursuant to Government Code Section 65858.

Pass and adopted this 18th day of August, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Leslie McBride, Mayor

Attest:

Terrell Locke, City Clerk

Approved as to form:

Tim Hayes, City Attorney