



City of Sebastopol Planning Department

Meeting Date: January 24, 2023
Agenda Item: 5A
To: Planning Commission
From: Kari Svanstrom, Planning Director
Subject: Zoning Code Interpretation – Alcohol Use Permit off-sale provisions
Recommendation: Approve with Conditions

Background:

The city's alcohol use permit ordinance, SCM 17.350, requires a use permit for any alcohol use in the City. Most permits are issued through a Conditional Use Permit process subject to Planning Commission review. The Sebastopol Municipal Code (SMC) allows the Planning Director or their designee to approve alcohol use permits for bone fide restaurants, subject to certain conditions. Since Covid, questions about how that applies to take-out related practices has arisen.

The Planning Director has prepared an official Zoning Ordinance Interpretation in response to recent questions regarding restaurant business practices within the City, and not in response to a specific Planning Director Interpretation request by a specific individual. The interpretation is in accordance with SMC 17.400.020.F, which grants the Planning Director the authority to interpret the Zoning Code, and SMC 17.400.020.G, which allows the Director to refer such items for interpretation to the Planning Commission to review. The Director is hereby referring the below interpretation to the Planning Commission for discussion and determination.

Zoning Code:

The Sebastopol Municipal Code (SMC) allows the Planning Director or their designee to approve alcohol use permits for bone fide restaurants, subject to certain conditions:

Alcohol Use Permit 17.350.080 - Exemptions.

The Planning Director shall have the authority to grant an exemption from the provisions of this chapter for:

A. Commercial or home occupation businesses where only office related activities will be performed, and where the storage and on-site sale of alcoholic beverages will not, at any time, occur.

B. Repealed by Ord. 1116.

C. Restaurants or “bona fide” public eating places which offer for sale or dispense for consideration alcoholic beverages including beer or wine incidental to meal service. The exemption shall be approved in writing by the Planning Director and shall be subject to the right of appeal to the Planning Commission as provided in Chapter 17.455 SMC. The exemption shall only be approved if the applicant agrees in writing to comply with the following criteria and conditions:

1. The premises contain a kitchen or food-serving area in which a variety of food is prepared and cooked on the premises.
2. The primary use of the premises is for sit-down service to patrons, and the establishment is not a drive-up, drive-through, or fast-food restaurant.
3. The establishment serves food to patrons during all hours the establishment is open for customers.
4. The establishment only serves alcohol in a dining area and not in an alcohol serving area that is separate from the dining area.
5. Adequate seating arrangements for sit-down patrons are provided on the premises, not to exceed a seating capacity of 50 persons.
6. Any take-out service is only incidental to the primary sit-down use and does not include the sale or dispensing for consideration of alcoholic beverage or beer or wine.
7. No alcoholic beverages or beer or wine are sold or dispensed for consumption beyond the premises.
8. No dancing or live entertainment is permitted on the premises except with approval by the Chief of Police and Planning Director, who may impose conditions controlling such activities.
9. An employee alcohol awareness training program and security plan is approved by the Chief of Police.

During the Covid epidemic, certain provisions of ‘to go’ / ‘take out’ of alcoholic beverages were modified by the ABC (Alcohol Beverage Control) and State Legislature to accommodate restaurants during the shelter in place and to support restaurants and individuals who wished to do ‘take out’ rather than in-house dining consistent with Covid precautions. While the City did not receive or enforce on any alcohol take-out provisions at that time, the question has since been raised whether or not the following business practices are consistent with the above listed criteria by the City:

- 1) Sale of alcohol along with a meal as a ‘take out’ meal (for those who would rather consume their meal/alcohol at home or another location rather than the restaurant);
- 2) The practice of wrapping the remains of a partially consumed bottle ‘to go’ (such as when someone orders a bottle for a table but they do not consume the full bottle);

- 3) Sale of alcohol for 'take home' after a meal (such as, when someone has a meal or glass of wine / beer at a bone fide restaurant, and wishes to purchase an extra bottle or so to take home with them for later consumption);

While all three of the above could be considered a violation of a strict interpretation of Criteria 6 and 7 above, the Planning Director.

It is the Planning Director's interpretation that the above two business practices meet the intent of the Alcohol Use Permit regulations, in that item 1 (alcohol along with the purchase of a bone fide meal) is a practice that has risen during Covid to accommodate both restaurants, and covid-vulnerable or otherwise cautious community members, as well as community members who choose to consume their meal in a different location than they may have prior to Covid.

Additionally the second and third items are a standard practice for many restaurants. The Planning Director believes the City would want to encourage Item 2 in particular, to encourage moderation in alcohol consumption rather than over-consumption so as not to 'waste' an alcohol already purchased for a meal. Item 3 can be seen as an extension of Item 2, in that it is occurring at the same time as the meal. Note, all of these instances are allowed under the typical ABC licensing for restaurant alcohol license (Type 41/42).

However, the Planning Director also believes that a fourth business practice would not be consistent with the above:

- 4) Sales of alcohol separately from a meal or the normal kitchen hours (i.e., as someone coming in just to buy a bottle of wine as they might at a grocery/liquor store).

This is a further step in the direction of having a retail sales floor, and the Planning Director has determined that this would not be consistent with the intent of SMC 17.350.080, which provides the exemption for a Use Permit approved by the Planning Commission for restaurants, as it could provide consistency issues with Criteria 2, 3, 6, and 7. While such a practice is still allowed in the City, it would require review by the Planning Commission consistent with other alcohol use permits as described in SMC 17.350.

Recommendation:

The Planning Director is referring this interpretation to SMC Section 17.350.080.C to the Planning Commission to review and discuss this interpretation. The Commission's options are:

- 1) Concur with the interpretation;
- 2) Modify the interpretation in part or in whole to reflect the (should the Commission disagree with any aspects of the above.

Once the Commission has issued a concurrence or modification to this Interpretation, this Interpretation would be subject to the 7 day appeal period prior to becoming final, as provided for in the SMC 17.455. All existing, and any future, alcohol use permits so issued within the City of Sebastopol will be subject to this interpretation.

Attachments:

Section 17.350 Alcohol Use Permits