

PROACTIVE CODE COMPLIANCE PROGRAM

Alcohol Serving Establishments

A proactive inspection and compliance program to help respond to and address the adverse impacts associated with the operations of alcohol serving establishments

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A. PURPOSE

During numerous public hearings spanning over several months in 2013, the City Council received presentations and took testimony from many speakers who raised concerns over the adverse impacts associated with existing, expanding and new alcohol-serving establishments in the City; particularly in the Downtown area. Some of the common concerns raised by community members included noise, disorderly conduct, graffiti, trash, and idling buses.

What was disclosed during those hearings is that there are already a number of existing laws and regulations in place that could help address the adverse impacts associated with bars and alcohol serving restaurants. However, the City's Code Enforcement division, like many other jurisdictions, engages only if a formal complaint is filed. This reactive approach to code enforcement is often utilized due to staffing limitations and/or it minimizes the appearance that the City is targeting specific violators.

However, given the level of inquiries received over the past year, it has become obvious that a more proactive enforcement approach and public outreach is necessary.

This "Proactive Code Compliance Program for Alcohol-Serving Establishments" is intended to outline our revised approach to code compliance relative to this issue. The purpose of the program is to memorialize the "why, what and when" we will conduct proactive code enforcement (based on existing regulations that are in place) and to establish a monitoring/tracking effort to determine whether the efforts are effective.

B. MISSION OBJECTIVES

The objectives of this program are as follows:

- Improve relations between business establishments, neighboring community members and City;
- Reduce the type and number of adverse impacts that are being experienced;
- Increase awareness and knowledge of relevant codes and regulations; and,
- Increase participation and communication between business establishments, community members and City.

C. COMPLIANCE FOCUS AREAS

This section describes those codes and regulations that exist today that will be enforced as part of this proactive enforcement program. Each section below will include a brief summary of the code section and the available options for noncompliance.

1. Responsible Beverage Service & Sales (RBSS)

a. Code Summary

The City of Encinitas adopted a Responsible Beverage Sales and Service (RBSS) ordinance on December 9, 2009 (Refer to Ordinance No. 2009-13). Encinitas Municipal Code Chapter 9.43 requires all sellers and servers of alcoholic beverages at retail establishments in Encinitas to complete a Department of Alcoholic Beverage Control (ABC) certified four-hour course every two years. The course teaches employees how to identify and refuse service to inebriated customers,

spot false ID's, and recognize under-age drinkers. The course also teaches licensees about ABC laws and policies.

b. Compliance Mechanism

A Code Enforcement Officer will visit the establishment on a routine basis to verify that all servers are in possession of a current and valid RBSS certification. When asked by a Code Enforcement Officer or other City official, a server shall provide a copy of the current and valid certification.

Failure to comply with the current codes may result in the following enforcement actions until compliance is achieved. (E.M.C. 9.43.030)

- First infraction will result in a verbal warning to the server, manager and business owner.
- Second and subsequent infractions occurring within a 12 month period may result in the issuance of administrative citations (\$100 - 2nd violation; \$200 – 3rd violation; \$500 – 4th violation).

2. *Maximum Occupancy Load Requirements*

a. Code Summary

The CA Fire Code includes provisions that require commercial structures to post maximum occupancy loads --- the maximum number of people allowed in an area at any one time as determined by the local (Encinitas) Fire Department. The signs must be located in a conspicuous space such as above the main exit. At no time should an area exceed the determined maximum occupancy load (2013 CA. Fire Code, Chapter 10, section 1004 and Table 1004.1.2. and 2013 CA. Fire Code - Chapter 1, section 106 and 109.)

b. Compliance Mechanism

Only the fire code official is authorized to enforce the provisions of the Fire Code. However, a City Code Enforcement Officer and/or Sheriff's Deputy is authorized to investigate and make a determination as to whether the occupancy load is being followed and report those findings to the City Fire Marshall.

When it is determined that the maximum occupancy load is being violated, the business owner may be subject to the following actions:

- First infraction will result in a verbal warning by the Fire Marshall/Sheriff's Deputy/Code Enforcement Officer and require the property owner to reduce the number of patrons until max occupant load is reached;
- Second infraction occurring within a 12 month period shall result in the Fire Marshall emptying out the overcrowded bar or restaurant, have patrons stand outside for 10-20 minutes while he/she discussed fire and life safety issues and overcrowding with the management. The Fire Marshall will direct the management to count patrons in the door until max occupant load is reached; and,

- Third infraction within a 12 month period may result in emptying out the overcrowded bar as explained above along with a \$100 fine. The fine increases with subsequent infractions in the amount of \$200, then \$500.

3. Noise Standards/Nuisance Abatement

a. Code Summary

Every person is entitled to an environment in which the noise is not detrimental to his or her life, health and enjoyment of property. The making and creating of disturbing, excessive, offensive and unusually loud noise is a violation of the Encinitas Municipal Code (E.M.C. 9.32, 9.40 and 30.40) and California Penal Code 415. The purpose of codes is to secure and promote the public health, comfort, convenience, safety, welfare, prosperity, and the peace and quiet of the City and its inhabitants.

Noise violations include, but are not limited to,

- Loud music, live or recorded
- Disturbing or raucous yelling, shouting, hooting, whistling or singing
- Drums or other instruments

b. Compliance Mechanism

When it is determined that a noise violation has occurred, the business owner may be subject to the following actions:

- First infraction will result in the issuance of an Administrative Citation Warning and a "Notice of Violation: First Response."
- Second and subsequent infractions occurring within a 12 month period may result in the issuance of administrative citations (\$100 - 2nd violation; \$200 – 3rd violation; \$500 – 4th violation).

4. Trash

a. Code Summary

Litter and the accumulation of other discarded materials on private property and/or public places create a public nuisance that can have an effect on the health, welfare and safety of the residents. Maintaining a property with litter or other discarded materials or depositing such in a public place is a violation of the Encinitas Municipal Code. Litter is only permitted in public receptacles or authorized private receptacles. The regulations provided in E.M.C. 11.20 and 11.24 are designed to eliminate such problems (Refer to E.M.C. 11.20 and 11.24)

b. Compliance Mechanism

Failure to comply with the current codes may result in the following enforcement actions until compliance is achieved. (Refer to E.M.C. 1.08)

- First infraction will result in an Administrative Citation Warning
- Second and subsequent infractions occurring within a 12 month period may result in the issuance of administrative citations (\$100 - 2nd violation; \$200 – 3rd violation; \$500 – 4th violation).

5. *Under Aged Drinking*

a. Code Summary

It is a misdemeanor under the state penal code (Section 25658) to:

- Purchase or provide alcoholic beverages to anyone less than 21 years of age.
- Consume alcoholic beverages on any on-sale premises when a person is less than 21 years old.
- Allow a person less than 21 years old to consume alcoholic beverages on any on-sale premise.

Further, it is an infraction for:

- Any person less than 21 years old to attempt to purchase any alcoholic beverage

b. Compliance Mechanism

Failure to comply with the current codes may result in the following enforcement actions until compliance is achieved. (Refer to California Penal Code 25658 and 25658.5)

Misdemeanor:

- A Notice to Appear Citation will be issued and submitted to court
- The case will be forwarded to the Department of Alcohol Beverage Control. (ABC)

Infraction:

- A fine of not more than \$250
- Between 24 and 32 hours of community service
- A combination of the above

6. *Idling Busses*

a. Code Summary

The idling of party buses waiting for bar patrons into the late night within residential neighborhoods has been identified as a problem in the downtown area. Idling buses result in increase in carbon monoxide levels (poor air quality) and can be noisy to nearby residents.

The California Environmental Protection Agency's Air Resources Board (ARB) prohibits vehicles from idling for more than 5 minutes within California's borders. There is an existing program in

place where idling vehicles can be reported via phone or email to the ARB and the complainant's name may be kept anonymous. Staff spoke with the ARB and found enforcement does occur, but is limited with regard to party buses due to current staffing levels..

b. Compliance Mechanism

Sheriff may ticket vehicle operators when observed (California Vehicle Code Section 34506.3 and § 2485. Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling).

7. *Entertainment Establishment Licenses*

a. Code Summary

Entertainment is regulated by E.M.C. 6.08.020.H, which adopts the San Diego County Code by reference. (Title 2, Division 1, commencing with Section 21.2101 relating to Entertainment Establishments.) Entertainment Establishment Licenses are administered by the City Clerk's Office and E.M.C. 6.08.040 states that the sheriff's department is the issuing authority for the licenses.

An Entertainment License is required for either informal or professional entertainment

- Informal – public is admitted. No professional entertainer participates, directs or conducts another person's participation.
- Professional –public is admitted. Professional entertainer participates, directs or conducts another who participates.

An Entertainment Establishment License is NOT needed when:

- Mechanical music alone, i.e. a radio or jukebox
- Instrumental music alone, i.e. no amplification
- Dancing participated in only by customers

b. Compliance Mechanism

Failure to comply with the current codes may result in the following enforcement actions until compliance is achieved.

- The music must be shut down music.
- First infraction will result in a verbal warning to the manager and business owner.
- Second and subsequent infractions occurring within a 12 month period may result in the issuance of administrative citations (\$100 - 2nd violation; \$200 – 3rd violation; \$500 – 4th violation).

D. INPSECTION TEAM/INSPECTION FREQUENCY

This section describes how the City intends to conduct inspections; specifically, what departments are involved, how often the inspections will be conducted and what Compliance Focus Areas will be targeted during these inspections.

1. Late Night Inspections

Many issues involving alcohol-serving establishments occur late in the evening/early morning when the City offices are closed. The intent of Late Night Inspections is for City officials to have a presence in the business community and randomly inspect alcohol serving establishments in order to educate owners and patrons and to make sure that the relevant rules and regulations are being followed. It is intended that Late Night Inspections occur randomly between the hours of 10 pm and 2 am.

a. The Team

For safety purposes, Late Night Inspections will include at least one Code Enforcement Officer and one on-duty Sheriff's Deputy. The Fire Marshall may be included in the inspections as determined necessary by the Code Enforcement Officer or Sheriff's Deputy.

b. The Frequency

The minimum frequency for Late Night Inspections shall be as follows:

- Monthly during the summer break (June, July, August)
- Once during Spring Break (March/April)
- Once during fall (September – November)
- Once during winter (December – February)

The City may direct additional inspections if determined necessary.

c. The Compliance Focus Areas

All of the Compliance Focus Areas listed in Section C may be part of Late Night Inspections; however, special focus will be on the following:

- Noise/Nuisance
- Maximum Occupancy Load
- Underage drinking
- Idling buses

2. Routine Spot Inspections

Routine Spot Inspections are intended to be random and occur during regular business hours.

a. The Team

A Code Enforcement Officer shall take primary responsibility for these inspections. A Sheriff's Deputy that finds a business owner in violation of any of the Compliance Focus Areas shall inform the Code Enforcement Officer for further action.

b. The Frequency

The minimum frequency for Routine Spot Inspections shall be as follows:

- Weekly during the summer break (June, July, August)
- Weekly during Spring Break (March/April)
- Monthly during fall (September – November)
- Monthly during winter (December – February)

The City may direct additional inspections if determined necessary.

c. The Compliance Focus Areas

All of the Compliance Focus Areas listed in Section C may be part of Routine Spot Inspections; however, special focus will be on the following:

- RBSS
- Trash
- Entertainment Establishment Licenses

3. *Minor Decoy Program*

This program is administered by the Sheriff's Office and involves an under-aged person entering into an establishment who tries to purchase alcoholic beverages.

a. The Team

These operations focus on establishments that reportedly sell alcohol to minors. These types of countywide operations are monitored and regulated by The Department of Alcohol Beverage Control (ABC). The San Diego Sheriff's Department works with ABC.

b. The Frequency

The frequency of these operations will be determined by ABC and the Sheriff's Department based on need and resource availability.

c. The Compliance Focus Areas

A citation is written or an arrest is made and submitted to the Court. The Law Enforcement agency will forward the case information to the ABC for further action.

4. *Special Patrols*

Special patrols are operated by the Sheriff's Department, including the Community Oriented Policing and Problem Solving (COPPS) unit and regular patrol units.

a. The Team

Special patrols are operated by the Sheriff's Department, including the Community Oriented Policing and Problem Solving (COPPS) unit and regular patrol units

b. The Frequency

These directed patrols are completed primarily during the spring and summer months and major holidays. Extra patrols may be set up based on patrol call volumes to a particular location. Generally the Drunk in Public Details are conducted four times a year focusing on the Spring Break, summer months and Thanksgiving Holiday. The Encinitas Station COPPS Unit will conduct six to eight smaller details throughout the year based on patrol calls volumes.

c. The Compliance Focus Areas

Violations will result in the issuance of a citation or arrest depending upon the violation. These cases are submitted to the Court. The Law Enforcement agency will forward the case information to Department of Alcohol Beverage Control

5. *Community/Business Meetings*

While not considered a form of inspection, regularly scheduled meetings with business owners and neighbors are often considered the most effective form of proactive enforcement. Regularly scheduled meetings allow participants to talk out issues and concerns and provide a venue so folks can candidly discuss which activities are working and which are not working. Based on those discussions, adjustments can be made to the program to reduce the identified conflicts between businesses and neighboring property owners. Regular meetings can also help alert folks of upcoming events so the group can discuss ways to help minimize and mitigate any potential adverse impacts before they happen.

a. The Team

The City participants will include, at a minimum, a Code Enforcement Officer and Sheriff's Deputy. As determined appropriate, the Planning and Building Director and City Manager or other City or Sheriff's Department staff as deemed necessary may also participate in the meetings. The public participants will include both residential property owners and organized community groups (i.e. Encinitas Citizens Committee) and business owners and organized business groups (i.e. Encinitas Hospitality Association).

b. The Frequency

Meeting frequency should occur as follows:

- Once per month during the summer break (June, July, August)
- Once before Spring Break (March/April)
- Once during fall (September – November)
- Once during winter (December – February)

The group may adjust the frequency of the meetings, as determined necessary.

E. MONITORING AND REPORTING

It is critical to the success of any program to monitor and track efforts to make sure the changes that have been implemented are making a positive difference. Because this is a new program, the first year will largely focus on educating the residents and business owners and on developing a baseline.

At the conclusion of each Late Night Inspection and Routine Spot Inspection, Code Enforcement will log the frequency and type of various infractions that they witnessed and whether or not a formal enforcement action was charged.

This information will be shared at the community/business group meetings and a report will be provided to the Council at the end of the year, or more frequently as directed.