



DOUGLAS T. SLOAN
City Attorney

April 18, 2019

MEMORANDUM

TO: Councilmembers

RE: Report on ABC License Project

I. INTRODUCTION

On March 28, 2019, the City Attorney's Office (CAO) was directed to investigate violations at off site alcohol sales businesses, excluding grocery stores and drug stores, in Districts 1, 3, 5, and 7.

As part of this project, the CAO team has:

1. Researched applicable law, including Alcohol Beverage Control (ABC) regulations, and Fresno Municipal Code (FMC) provisions;
2. Created a checklist for violations;
3. Conducted site visits at each of the 204 businesses meeting the qualifications for the investigation;
4. Searched Planning documents for Conditional Use Permits (CUPs) and Conditions of Approval for each business;
5. Reviewed Fresno Police Department (FPD) calls for service for each business;
6. Prepared a spreadsheet with business information, owner information, violations present, and calls for service for each business; and
7. Identified worst offenders based on numbers of violations, severity of violations, and calls for service.

II. RESEARCH PHASE

A. State Law (ABC) and FMC

Our team researched ABC regulations and the FMC in order to determine a framework to apply to all businesses. FMC section 15-2706 contains most of the regulations related to alcohol businesses in the City of Fresno. Many of the items on the checklist came from the FMC regulations.

State law and ABC regulations are somewhat co-extensive with the FMC. They also include additional violations about selling to minors, employing minors, sales to intoxicated persons, and other violations that would have been difficult to observe during this investigation.

B. CUPs

Our team requested CUPs from Development and Resource Management (DARM), and we were provided access to an online portal containing scanned historical documents dating back more than 30 years in some cases. Assistant Director Mike Sanchez was able

to narrow the scope of where to look for the CUPs and Conditions of Approval. In some cases, however, the documents were not available through the website, and we have been unable to locate the alcohol conditions.

III. INVESTIGATION PHASE

From the Alcohol Beverage Control (ABC), the CAO team received a list of 292 locations. We sorted them by district and eliminated grocery stores and drug stores like CVS and Walgreens. We kept on the list some of the markets appearing to operate as more of a liquor store than a market.

Of the remaining properties, we visited all 204 businesses. In District 1, the team went to 38 sites. In District 3, the team went to 60 sites. In District 5, the team went to 37 sites. In District 7, the team went to 69 sites. These site visits were conducted during the day, and the team members did not attempt to purchase any alcohol as part of the investigation.

IV. VIOLATIONS

A complete chart of violations listed by district and by total is attached hereto as Exhibit A. Photographs of common violations are attached hereto as Exhibit B. There were 930 total violations noted at the 204 businesses. District 1 had 172 observed violations. District 3 had 261 observed violations. District 5 had 176 observed violations. District 7 had 320 observed violations.

Due to the time consuming nature of obtaining CUPs for every property, we noted some conditions as violations which may or may not have violated the business' CUP. For example, many businesses may be legally allowed to sell individual beers in 16 or 24 ounce cans (tall cans) or beers and malt liquor in 40 ounce bottles. Likewise, businesses may currently be allowed to sell small bottles of liquor of approximately 50 milliliters. However, a violation is noted for every business selling those types of products in order to demonstrate the high frequency of these products.

The five violations observed most frequently were tall cans or 40 ounce bottles for sale (195 violations), small liquor bottles of approximately 50 milliliters (112 violations), missing "Open Container" signs as required by FMC 15-2706(k) (106 violations), missing "Legal Age" signs as required by FMC 15-2706 (100 violations), and advertising covering more than 15% of windows as prohibited by FMC 15-2706 (99 violations).

In addition, we observed 59 businesses selling individual beers or wine coolers intended to be sold in quantities of four or more. This is a clear violation of FMC section 15-2706(p)(2).

Most businesses had the required interior and exterior surveillance, and most were clear of trash and graffiti on the exterior. Loitering was only observed at 27 businesses, but the site visits took place during the hours of 9:00 a.m. to 5:00 p.m., which may not be the most active loitering hours.

Part of the team's task was to observe prices of specific items to compare and identify businesses selling below wholesale. This was more difficult than expected because many businesses did not list prices for alcohol. Some businesses displayed pre-printed signs provided by the alcohol manufacturer, and so the average prices observed were likely not below wholesale. However, other businesses with no listed prices may be selling below wholesale to all customers or specific customers.

We were able to locate 131 CUPs containing alcohol conditions. We also found 40 CUPs related to the business addresses not containing alcohol conditions. We were unable to locate 31 CUPs. Many of the businesses fall under a general CUP from 1994, C 94-86. The conditions of this CUP were to obey all ABC laws and the FMC.

V. MOST EGREGIOUS VIOLATORS

Based upon violations and observations during the investigation, the top two violators in each district are:

District 1

- 505 W. Dakota (City Wide Market)
- 4005 N. Marks (Dan's Liquor)

District 3

- 147 E. Kearney (Kearney Market)
- 394 E. Olive (Tower Gas & Mini Mart)

District 5

- 4815 E. Butler (AJ Liquors)
- 628 S. Chestnut (Hut Market)

District 7

- 3878 E. McKenzie (McKenzie Ave Market)
- 4622 E. Tulare (U-Save Liquor)

Once we received calls for service, we added the following additional businesses as they had the top three numbers of FPD calls for service in each District:

District 1

- 3793 N. Hughes (Fastrip) (252 calls for service)
- 3005 W. Ashlan (7 Eleven) (242 calls for service)
- 3209 W. Shaw, Suite 101 (U Save Liquor) (203 calls for service)

District 3

- 247 E. Olive (Circle K) (492 calls for service)
- 1350 Fresno (Johnny Quik) (347 calls for service)
- 1102 Fresno (Family Express Food and Liquor) (312 calls for service)

District 5

- 4910 E. Kings Canyon (Fair Price Liquor) (270 calls for service)
- 4897 E. Kings Canyon (JL Gas and Food) (205 calls for service)
- 2397 S. Chestnut (7 Eleven) (164 calls for service)

District 7

- 3177 N. Cedar (Western Refining Retail) (304 calls for service)
- 1629 E. Ashlan (7 Eleven) (271 calls for service)
- 3808 N. Blackstone (Bulldog Gas and Mart) (210 calls for service)

VI. POTENTIAL NEXT STEPS

Direction is needed to determine what next steps, if any, are necessary.

A. Reevaluate After April 25, 2019 Council Meeting

Enough evidence may exist from the first round of investigation. If so, we can regroup after the meeting on April 25 to determine what our next steps should be.

B. Second Round Investigation

The investigation so far has taken place during the day. Violations of inadequate lighting and sales between 2:00 a.m. and 6:00 a.m. could only be observed during irregular working hours. A second round could include observation of these violations at a select few businesses, rather than all 204.

C. Enforcement

Additional documentation of violations would be necessary to begin enforcement and revocation of CUPs. If enforcement will take FPD calls for service into consideration, we may need to communicate with FPD to determine if there are already any enforcement measures underway for these specific businesses.

Respectfully submitted,



Christina A. Roberson
Supervising Deputy City Attorney

CAR:cg;74589

Attachments: Exhibit A: Violation Totals
Exhibit B: Photographs

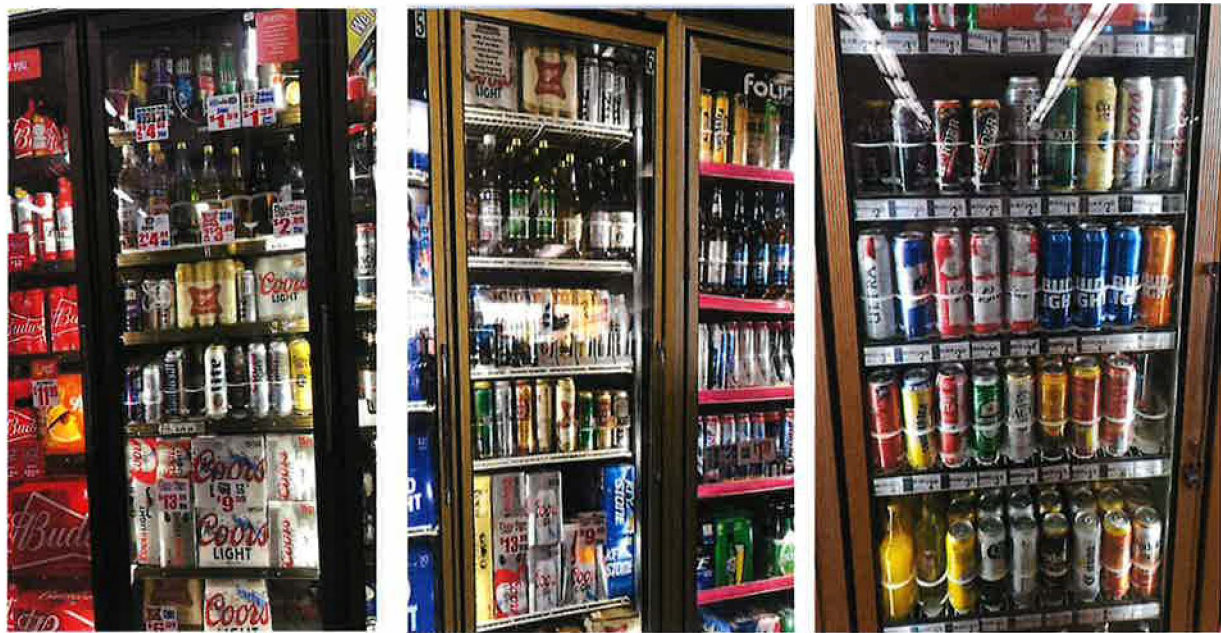
EXHIBIT A

	District (businesses inspected)				
	D1 (38)	D3 (60)	D5 (37)	D7 (69)	Total (204)
EXTERIOR VIOLATIONS					
Trash, litter, and/or debris present.	0	6	3	5	14
Graffiti present.	5	8	7	7	27
Pay phones or vending machines present.	3	2	3	4	12
More than 15% of square footage of windows covered by signs/ads.	19	32	20	28	99
Loitering and/or other nuisance activities occurring at the property. (ex: on-site consumption, drug activity, prostitution, harassment of passerby, etc.)	3	9	6	9	27
Alcohol advertising at gasoline pumps (if applicable).	0	0	2	0	2
Missing exterior video surveillance system.	10	8	8	14	40
Missing trash and recycling receptacles at public entrances/exits.	4	7	10	16	37
Missing "Open Container" posting.	21	22	21	42	106
Missing "No Loitering" posting.	19	20	12	42	93
INTERIOR VIOLATIONS					
Missing interior video surveillance system.	1	3	2	1	7
Missing "Legal Age" posting.	15	34	14	37	100
Mini-bottles for sale (wine or liquor).	23	33	23	33	112
Individual tall-cans/40's for sale.	36	56	37	66	195
Broken up 6-packs for individual sale.	13	21	8	17	59
Bud-Light 12-pack (average price)	\$9.39	\$9.89	\$9.82	\$9.37	
(lowest price observed)	\$8.99	\$8.69	\$8.99	\$8.66	
(price advertised at Vons)	\$10.99	\$10.99	\$10.99	\$10.99	
Bud-Light 12-pack price not listed	15	27	16	24	82
Coors Light 12-pack (average price)	\$10.18	\$9.97	\$9.87	\$9.36	
(lowest price observed)	\$8.99	\$8.99	\$8.99	\$7.99	
(price advertised at Vons)	\$9.99	\$9.99	\$9.99	\$9.99	
Coors Light 12-pack price not listed	18	34	19	21	92
Number of FPD Calls for Service	2652	6318	2080	4005	15,055

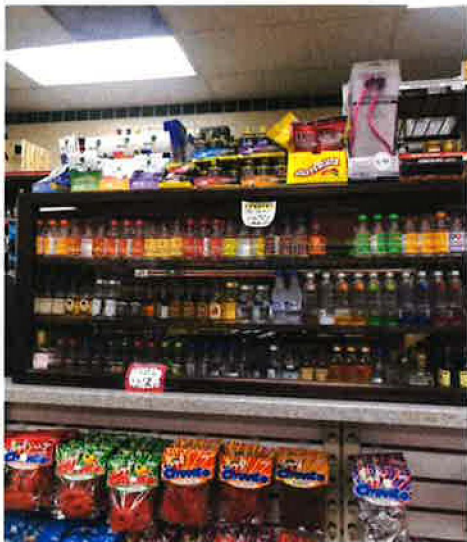
Exhibit B
Examples of
Alcohol Violations Observed

Investigation:
April 4, 2019 – April 10, 2019

Tall Cans and 40 Ounce Bottles



Small Liquor Bottles



Individual Sales



Exterior Violations

Examples of appropriate postings:

