



# Memorandum

To: LPA

From: Walter Fluegel, Community Development Director

Handwritten signature of Walter Fluegel in black ink.

Date: December 9, 2011

Re: Consumption On-Premises (COP) in EC Draft Ordinance Outline

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The purpose of this memo is to facilitate LPA input on Staff's Draft Outline of the COP in EC Ordinance. I have attached a draft outline of my recommended approach to regulating COP in the EC Zoning District. The outline, in an Excel Spreadsheet format, includes the basis for our recommendations on an issue by issue basis. Also, the Town Attorney has attached a document on Policy Consideration to provide a broader overview for the discussion on the issues.

At the October 11, 2011 LPA Meeting, you gave Staff your collective thoughts on an issue by issue basis in a broader context and then gave some preliminary indication of your direction on these issues through informal polling of your members at the meeting. Following are your thoughts, from the draft minutes for the October 11, 2011 LPA Meeting:

- *Should COP and EC be limited as an ancillary use and should it be restricted to principle uses such as bars, restaurants, and resorts – 6 ayes, and 1 undecided.*
- *Should the ancillary use be restricted within specific zoning districts – 5 ayes, 1 nay, and 1 undecided.*
- *Should resorts have regulations that are specifically different from the bars and restaurants in the Downtown Zoning District – 3 ayes, 3 nays, and 1 undecided.*
- *Should the method of new approval be special exception – 7 ayes.*
- *Should the method of CPD be used for rezoning for new resorts or new commercial developments that would require a CPD - 5 ayes, 1 nay, and 1 undecided.*

*Discussion was held concerning if the LPA was interested in recommending that service and consumption aspects be handled separately; or deal with consumption only.*

*Ms. Shamp continued to review the list on her 3-page handout for LPA consensus:*

- *Would you encourage new decks to be built seaward of the '78 Construction Line – 7 nays.*
- *Would lean toward existing decks and pool areas – 7 ayes.*

Based upon your input at the October 11, 2011 LPA Meeting, the dialogue on COP over the past year and Staff research, I believed it would be of value for Staff to develop a draft regulatory approach in a format which is in a less formal format than you are accustomed to seeing ordinances in. This format also provides some clear perspective on Staff rationale for the proposed regulatory approach, on an issue by issue basis. Hopefully, this format will provide a meaningful template to facilitate your collective thoughts on an issue by issue basis and help Staff develop a stronger basis for our recommendations.

We look forward to your input on the 13<sup>th</sup>.

**POLICY CONSIDERATIONS IN THE DEVELOPMENT OF REGULATIONS FOR  
CONSUMPTION ON PREMISES IN THE EC ZONING DISTRICT**

1. Regulation of existing establishments that are currently serving alcohol in the EC Zoning District.

- Status as either legal or illegal non-conforming uses—inability to expand without obtaining additional approval
- Health and safety regulations that can be applied to existing establishments even those that are legal non-conforming uses
- Approval procedure for non-conforming uses that would permit expansion (special exception vs. administrative approval)
- Current zoning of existing establishments and whether regulations should be different (i.e. Downtown vs. outside Downtown)

2. Regulation of new establishments desiring to gain approval for serving alcohol in the EC zoning district

- Extent to which the COP area can extend into the EC zoning district (percentage of width of the beach or uniform number of feet)
- Permissible methods of delineating and limiting area where service/consumption is permitted (i.e. rope and post, deck area, vegetation)
- Signage
- Buffering
- Parking requirements
- Requirements for service items (eg., biodegradable cups; name of establishment)
- Permitted hours of service
- Permissible accessory beach furniture
- Entertainment/noise considerations
- Other considerations designed to mitigate potential adverse effects

**COP in EC Standards and Procedures**

Procedure	Inside Downtown	Outside Downtown	Basis of Recommendation	For	Against	LPA Recommended Changes
Existing Establishments (the 12 identified in the October COP Report)	Administrative Amendment	Administrative Amendment	Staff's objective in allowing existing establishments with some form of COP in EC by Administrative Approval is to provide an easier process to bring those establishments into compliance with the Standard Conditions identified below.			
Establishment currently approved for COP adjacent to EC, but not approved for service and/or consumption in EC	Administrative Amendment	Not allowed	Staff's objective in allowing existing establishments without prior approvals for COP in EC by Administrative Approval is to provide an easier process to bring those establishments into compliance with the Standard Conditions identified below. As identified in the COP in EC Report, this option would only be available to two establishments, Diamonhead and Top O' Mast.			
New establishments	Special Exception	Not allowed	Staff is recommending that any new establishments in the Downtown wanting approval for COP in EC, can only be done by Special Exception and be subject to the Standard Conditions. Staff is recommending that no new establishments outside the Downtown be allowed to have COP in EC. As identified in the COP in EC Report, Staff's recognizes that further expansion of COP in EC outside the Downtown has the potential to be disruptive to the character of surrounding neighborhoods.			
<b>Standard Conditions</b>						
Area of expansion in EC is limited to 1/3 of the distance from the EC Zoning line or rear building/deck line (if the building extends over the EC Zoning line), seaward to the MWH or ECL (whichever is less)	X	X	Staff recognizes the important role sunbathing beaches play in the vitality of our beaches. Further, Staff is sensitive to the need for public access for pedestrians along the shoreline and the need to protect the sun bathing beaches along the shoreline. Staff is sensitive to the natural functions of the beach, including beach erosion. Accordingly, Staff proposes that any expansion of COP in EC be limited to the first third of property adjacent to the landward EC Zoning line.			
The area of extension of premises in EC must be enclosed on three sides by rope and post extending from the rear of the building or deck to the seaward allowed distance.	X	X	Staff recognizes the importance of establishing dominion and control of any expansion of licensed premises in the EC Zoning District. Further, we recognize the need to restrict the potential for migration of alcohol along the beaches. Accordingly, Staff recommends that the licensed premise in EC be confined within rope and post.			
One 6' wide pedestrian access opening is allowed per 100' of the rope and post along the side parallel to the waterline. Each pedestrian access point shall contain 2' by 2' signs that indicate no alcohol is allowed to enter or exit that point.	X	X	Staff recommends to further limit the potential for migration of alcohol along the beaches by limiting the number of ingress/egress points to the area of expansion of licensed premise.			

The area enclosed by rope and post must be buffered by a 10' wide vegetative buffer on the outboard side, comprised of dune vegetation material. For those properties, with an enclosed area that is less than 30' in depth from the rear of the building to the seaward line of the area of expansion, the vegetative buffer shall only be required along the side property lines, adjacent to the rope and post.	X	X	Staff recommends to further define the area of expansion, to establish dominion and control and to limit the potential for migration of alcohol, a vegetative buffer should be required around the rope and post.			
Parking requirement for area of expansion in EC surrounded by rope and post.	None	None	Staff recognizes that the areas of expansion are oriented to pedestrian traffic along the beach shoreline and much the same as not requiring parking based upon the square footage of beach area for sun bathing, additional parking should not be required for the areas of expansion in the EC Zoning District. For example, code does not require additional parking for establishments offering beach chair rentals. Further, we recognize that a healthy, historic and viable seasonal parking lot market has emerged on the beach, which effectively serve the needs for the more densely populated beachfaring areas.			
All beverages served within the area of extended premise in EC, must be served in plastic bio-degradeable cups, with the establishments name on the cup. All other materials, such as straws, forks, spoons, etc, shall be made of bio-degradeable materials.	X	X	Staff acknowledges the environmental sensitivity that must be given to use of our beaches. Further, based upon our findings in the COP in EC Report, historically there have been no restrictions on the types of materials in which alcoholic beverages can be served. Accordingly, Staff recommends that service of beverages be limited to plastic bio-degradable cups, with the establishments name on the cup. This will also help prevent the migration of alcohol along the beach, while furthering the objective of dominion and control for the licensed premise.			
Hours of service and consumption in EC are limited to between the hours of 11:00 AM and 30 minutes after Sunset.	X	X	Staff recommends restricting the hours of service and consumption in EC to predominantly daylight hours, to prevent the migration of alcohol along the beach during evening hours and for the more fundamental safety considerations of residents and visitors.			
Accessory beach furniture in the area of expansion in EC is limited to chairs, tables and sunbathing chairs.	X	X	Staff recommends limitations on the types of beach furniture allowed in the area of expansion in EC to preclude the potential for mobile tiki bars, etc.			
The area of expansion in EC must be under the same ownership as the licensed premise and under the same property strap number.	X	X	Staff recognizes that the potential for expansion of premises in the EC onto adjacent property presents numerous potential problems and should not be allowed.			
Patrons may not bring their own alcohol into the area of expansion in EC.	X	X	State alcoholic beverage laws do not allow customers to bring their own alcohol into a licensed premise serving alcohol.			

No entertainment shall be allowed in EC, except for by Special Exception or Special Event Permit.	X	X	Staff believes that entertainment in EC should only be granted by Special Exception or Special Event Permit.			
The area of expansion must be maintained free of litter and debris on a continuous basis.	X	X	Due to the potential for negative environmental impacts, associated with service and consumption in the EC Zoning District, staff recommends conditions that require establishments to maintain the area of expansion free of litter and debris.			
Non-compliance with any of these provisions may be subject to revocation.	X	X	Staff recommends that non-compliance with the Standard Conditions should be subject to the potential for revocation of the extension of premise.			