



**DATE ISSUED:** September 19, 2013 **REPORT NO. PC-13-107**

**ATTENTION:** **Planning Commission, Agenda of September 26, 2013**

**SUBJECT:** Centre City Planned District Ordinance Amendment No. 2013-02 (San Diego Municipal Code Chapter 15, Article 6, Division 3) – Downtown Community Plan Area

**OWNER/  
APPLICANT:** Civic San Diego

**SUMMARY**

**Issue(s):** "Should the Planning Commission ("Commission") recommend to the City Council ("Council") approval of Centre City Planned District Ordinance (CCPDO) Amendment No. 2013-02?"

**Staff Recommendation:** That the Commission recommends that the Council approves CCPDO Amendment No. 2013-02 and introduces and adopts an ordinance amending the CCPDO (San Diego Municipal Code (SDMC) Chapter 15, Article 6, Division 3), as outlined in this report.

**Community Planning Group Recommendation:** On July 24, 2013, the Downtown Community Planning Council (DCPC) reviewed the proposed amendments to the CCPDO and voted individually on each of the amendments recommended by staff. The DCPC votes have been noted in each of the proposed amendments in bold throughout the report.

**Other Recommendations:**

On July 31, 2013, the Civic San Diego ("CivicSD") Board of Directors ("Board") voted 7-0 to support the proposed amendments as recommended by staff. The Board took a separate vote on the proposed amendments related to off-site alcohol sales and recommend that the minimum container size for *brewpubs* and *brewpub tasting rooms* be 32 ounces in lieu of the 22 ounces as proposed by staff and as recommended by the DCPC.

On September 11, 2013, the City of San Diego Code Monitoring Team (CMT) voted 9-0 with two abstentions to support the proposed amendments with elimination of the words "exhibits superior architectural design" from the findings for approval of a Planned Development Permit. At their meeting, the CMT received a presentation from Stone

Brewing Company (“Stone”) and its representatives and voted 10-0 with one abstention to recommend the establishment of an additional land use category, such as “Brewery Tasting Room,” which would accommodate the Stone retail store business model. The CMT recommended that the outlets be required to obtain a Conditional Use Permit (CUP) (Stone had requested lowering the review process to a Neighborhood Use Permit (NUP)). The CMT also voted 8-2 with one abstention to recommend that the outlets be allowed to sell their product in containers of 500 ml or larger (approximately 16.9 ounces, which is the size of bottles utilized for specialty beer products).

**Environmental Review:** Downtown’s land use regulations are covered under the Final Environmental Impact Report (FEIR) for the Downtown Community Plan (DCP), CCPDO, and 10<sup>th</sup> Amendment to the Centre City Redevelopment Plan, certified by the Former Redevelopment Agency (“Former Agency”) and Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively) and subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolutions R-04508 and R-04510), and August 3, 2010 (Former Agency Resolution R-04544). The FEIR is a “Program EIR” prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The proposed CCPDO amendments do not result in any new environmental impacts that were not already addressed in the FEIR or addenda to the FEIR. In accordance with CEQA Guidelines Sections 15162 and 15168, no further environmental documentation is required with respect to the proposed CCPDO amendments.

**Fiscal Impact Statement:** None.

**Code Enforcement Impact:** None.

**Housing Impact Statement:** None.

## **BACKGROUND**

The DCP area includes approximately 1,500 acres of the metropolitan core of San Diego, bounded by Interstate 5 on the north and east and the San Diego Bay on the south and southwest. The City of San Diego's (“City”) Strategic Framework Element of the General Plan recognizes downtown San Diego as the regional center; promoting greater residential development densities, as well as its role as the business, government, and cultural hub.

In 2006, the Council adopted the DCP and major amendments to the CCPDO, the framework for downtown development. At the time of adoption, staff determined it would be necessary to periodically amend these documents to make a variety of refinements based on lessons learned in implementation. A number of amendments have been processed and approved in 2007, 2010, 2011, and 2012.

## **DISCUSSION**

### **Project Description:**

The goal of these proposed CCPDO amendments is to simplify land development regulations; make the land development regulations more objective and adaptable; eliminate redundancies and/or contradictions; and, to increase predictability in the application of land development regulations downtown. As part of the proposed amendments, staff is proposing numerous modifications to the land use and development standards for downtown.

Several of the potential amendments generated significant public interest, therefore, staff notified all interested community organizations, neighborhood groups, and the building industry of the specific proposals to allow them the opportunity to review and comment prior to generating specific recommendations to present to the Planning Commission and Council.

### **SUMMARY OF PROPOSED REVISIONS TO THE CCPDO**

The proposed amendments to the CCPDO include the following:

1. **Definitions** (Section 156.0302) – This section is proposed to be revised to include the definition of: 1) *Live Entertainment* to include live performances by musicians or disc jockeys and/or the provision of dancing; and, 2) *Brewpub* and *Brewpub Tasting Room*, which define businesses with on-site brewing facilities.

*The DCPC voted 21-0 to support the staff recommendation.*

2. **Administration and Permits** (Section 156.0304) – Amendments to this section include elimination of the fourth finding required for approval of a Planned Development Permit (PDP), to be consistent with findings as required under the SDMC by eliminating the language that the deviation results in a development exhibiting superior architectural design. When this finding was added to the three City-wide findings in the CCPDO in 2011, the City Attorney's office questioned how it would be implemented and the Planning Commission also questioned the appropriateness of this finding. Staff initially proposed to eliminate this finding due to concerns expressed by the Planning Commission that not all deviations to development standards have a direct correlation to the architectural design. However, after further consideration and discussion at the DCPC and the CivicSD meetings, staff is proposing to modify the language of the fourth finding to state, "The development is consistent with the Downtown Design Guidelines and exhibits superior architectural design."

*The DCPC voted 20-0 to recommend that staff not eliminate the PDP finding and support staff's recommended language for modification to the fourth finding.*



3. **Land Use Districts (Section 156.0307)** – Modifications to the Base and Overlay Districts are proposed as follows:

- a. Neighborhood Center, Main Street, and Commercial Street Alternative Interim Uses – The DCP establishes eight distinct neighborhoods focused around Neighborhood Mixed-Use Centers, which are intended to be the focal shopping district of each neighborhood centered around a Main Street. In order to ensure that adequate shopping opportunities are created, active commercial uses are required on the ground floor of buildings as follows:

- Main Streets – 80% of frontage
- Commercial Streets – 60% of frontage
- Other streets – 40% of frontage

However, certain neighborhoods may not be adequately developed to support such retail spaces until the neighborhood matures and, rather than have retail space overbuilt and remain vacant, staff is recommending that developers be able to place interim uses in the spaces until the neighborhood can support the required commercial spaces with *active commercial uses*. For instance, this might apply to the first project within a Neighborhood Mixed-Use Center in the East Village that is surrounded by existing warehouse and low-rise development. Staff is recommending that *non-active commercial uses* be allowed through a Conditional Use Permit (CUP) for a period of up-to 10 years if it is found that the neighborhood is not adequately developed. This would allow for a standard lease and the neighborhood could be re-evaluated after the 10-year period, with the goal of *active commercial uses* occupying the buildings as soon as economically viable. The building owners would need to enter into leases meeting the CUP limitations.

*The DCPC voted 21-0 to support the staff recommendation.*

- b. Limited Vehicular Access Overlay – Includes reference to the Limited Vehicular Access Overlay shown in Figure E where previously not included.

*The DCPC voted 21-0 to support the staff recommendation.*

4. **Base District Use Regulations (Section 156.0308)** – Land Use Table 0308-A, has been updated to allow the following changes in Land Use:

- a. Sidewalk Cafes – Under the current regulations, sidewalk cafes are required to obtain approval of an NUP processed in accordance with “Process Two” under the City Land Development Code (LDC). Within the DCP area, Process Two applications are approved administratively by CivicSD staff after notifying and receiving public input. The staff determination is appealable to the CivicSD Board

(in lieu of the Planning Commission as is typical City-wide). The proposed amendments to the Sidewalk Cafe regulations would reduce the permit process level from a Process Two NUP to a Process One Limited Use for establishments that meet specific criteria established under the City-wide Sidewalk Cafe regulations, recently amended by the Council. The amendments also reduced the minimum width for the clear path of travel from eight feet to five feet. Staff proposes to allow a four-foot minimum clear path of travel in locations where the sidewalk width is 12 feet (north/south streets in Little Italy).

*The DCPC voted 22-0 to support the staff recommendation.*

- b. Assembly and Entertainment – Modifications providing clarification that Assembly and Entertainment uses seeking to provide Live Entertainment are required to obtain a CUP.

*The DCPC voted 19-0 to support the staff recommendation.*

5. **Development Regulations (Section 156.0310)** – Staff is recommending the following modifications to the development standards affecting residential developments, based on lessons learned in implementation over the past several years.

- a. Pet Open Space – Since 2006, the CCPDO has required that projects containing over 50 dwelling units provide 100 square-foot areas to allow pets to relieve themselves on site rather than on surrounding sidewalks. This area must be connected to the sewer system (unless it is an on-grade lawn surface) and provided with a hose bib for washing down surfaces. However, this area seems far too small for larger projects and staff is recommending that the area be increased for these projects by requiring that 100 square feet be provided for every 200 units or a portion thereof. For a typical 250-300 unit project (five-to six-story wood frame over podium), this would require 200 square feet of area instead of the current 100 square feet. For the recently approved 939-unit Blue Sky project, the requirement would have been 500 square feet. The issues associated with dog waste are becoming more of a problem downtown as the relatively few at-grade landscape areas are severely impacted, resulting in dead plantings and high-odor levels. The DCPC, as well as the Downtown San Diego Partnership, agreed that this is an issue and that it will continue to become a problem as the residential population downtown increases. They also stated that the issue may not necessarily be one that would be entirely addressed through the CCPDO and that broader discussions should continue to occur in order to determine a solution.

*The DCPC voted 21-1 in opposition of the staff recommendation. They opposed staff's proposal to increase the pet open space due to concerns that the pet open space built in existing developments has not been as successful as anticipated. The*

***DCPC had no specific solution to the pet waste problem and agreed that increasing the requirement would not help resolve the issue.***

- b. Roof-Top Mechanical Screening – Roof equipment has been required to be screened for many years, but in 2006 the CCPDO was amended to clarify that screening must be on all sides including the top of the equipment since many buildings will overlook the roofs of others. While any screening must be carefully designed to ensure that the equipment receives adequate air flow to properly function under warranty, recent projects have faced difficulty in screening the numerous individual condenser units favored in mid-rise construction. Some of the solutions have resulted in multiple smaller screen "boxes" being installed around small groups of units, which may be no more attractive than the individual units, especially if the units are organized into linear configurations. In addition, often times the screens for these smaller units can add disproportionate costs to a project because of air flow and maintenance access requirements, thereby requiring larger screens. Therefore, staff is recommending that the overhead screening be able to be waived for small condenser units through the Design Review Process. This would allow the rooftop screening to be reviewed on a case-by-case basis and would ensure that adequate screening is still being provided.

***The DCPC voted 17-0 to support the staff recommendation.***

6. **Separately Regulated Uses (Section 156.0315)** – This section is proposed to be re-organized and includes changes to the separately regulated uses as listed below and as shown in the Separately Regulated Uses Table in Attachment D:

- a. Outdoor Activities – In 2012, the CCPDO was amended to allow for a new land use category that would allow community events, markets, and art events on vacant properties in order to activate under-utilized properties and support community groups. Currently the CCPDO requires a CUP for such uses, as it was anticipated that the events would routinely involve nighttime or live entertainment activities. However, if the proposed uses do not include such uses that have the potential to regularly create noise impacts to the surrounding neighborhood, staff considers it appropriate to lower the level of review in order to encourage community groups and nonprofits to creatively use spaces downtown. Therefore, staff is recommending that outdoor activities be allowed through a Process Two NUP, unless live entertainment is proposed for more than six times a year (less than six times a year would be permitted by an administrative Temporary Use Permit). The proposed amendment would also add clarification to the definition of outdoor activities to allow structures (small booths and other small structures) to the space without the need to comply with the CCPDO development standards, such as minimum Floor Area Ratios and Heights.

***The DCPC voted 20-0 to support the staff recommendation.***

- b. Live Entertainment – The CCPDO currently requires a CUP and an application fee of \$10,605 for any live entertainment (includes musicians, disc jockeys, and/or dancing) in order to evaluate the potential to disrupt surrounding uses, especially residential uses. In order to provide relief to establishments wishing to offer accessory acoustic music to its patrons, staff is recommending that the following apply:
  - i. Limited Use (Permitted by right) – bona-fide eating establishments (restaurants) may have accessory non-amplified acoustical performances up to 11:00 p.m. (similar to the exemption for a Police Department entertainment permit).
  - ii. NUP (includes administrative review, public notification, and a \$1,421 application fee) – non-bona-fide eating establishments (coffee houses and bars), restaurants open beyond 11:00 p.m., and assembly and entertainment uses (movie theaters and banquet halls) offering live acoustical performances.
  - iii. CUP (includes a public hearing and a \$10,605 application fee) – all other establishments offering live entertainment, including live non-acoustic musicians, disc jockeys, patron dancing, and/or live entertainment located outside of an enclosed building.

*The DCPC voted 18-2 to support the staff recommendation.*

- c. On-Site Alcohol Sales – Since 2006, the CCPDO has allowed bona-fide eating establishments to sell alcoholic beverages as long as food is served, but requires a CUP if the bar area stays open after the kitchen is closed or if the establishment is a wine bar or full bar (without food). Staff is recommending simplifying the regulations as follows:
  - i. Bona-fide eating establishments – Bona-fide eating establishments (restaurants) may provide alcoholic beverages on the premises by right, subject to applicable state and local regulations.
  - ii. Non-bona-fide eating establishments – Non-bona-fide eating establishments, bars, assembly and entertainment uses, outdoor activities, and other similar commercial establishments that provide alcoholic beverages for consumption on the premises would be required to obtain approval of an NUP.
  - iii. CUP – If any of the establishments listed above offer live entertainment, they would be required to obtain approval of an NUP/CUP, if required in 6a above.

Initially, staff was proposing to allow alcohol sales by right, provided no live entertainment was being proposed for both restaurants and bars in all land use districts except for in the Residential Emphasis District, where an NUP was being



proposed. However, based on concerns raised at the DCPC meeting related to the allowance of on-premise alcohol sales for non-bona-fide eating establishments, staff determined that it would be appropriate to require an NUP for such uses since bars or other commercial establishments without food service may present unique conditions that should be reviewed through a discretionary permit. The NUP would simplify the process, but would still allow public input and provide for an appeal to the CivicSD Board.

*The DCPC voted 17-4 with one abstention to support the staff recommendation. The DCPC requested that staff add language that would allow the DCPC a period of time during the NUP review process to consider the application and provide staff with a recommendation prior to approval. The SDMC currently contains provisions as part of the NUP review process that extends the minimum 11-business-day time frame for a staff decision for an additional period not to exceed 20 business days to allow time for a recommendation from the recognized community planning group. These provisions apply downtown and therefore, staff is not proposing that any additional language be added to the CCPDO.*

- d. Off-Premises Alcohol Beverage Sales – Currently the CCPDO requires that off-site alcohol sales be limited to wine and liquor in containers of at least 750 ml and malt beverages in quantities of at least 64 ounces (for example allowing for two 32 ounce “growlers” from microbreweries). Downtown has stricter alcohol regulations than most of the City in order to reduce the impacts resulting from public inebriation as well as the availability of inexpensive alcohol to downtown’s large homeless population. These regulations have greatly improved conditions by eliminating nuisances associated with public drunkenness.

Most recently, the craft beer industry has requested that additional provisions be adopted to allow for the sale of smaller containers for beer produced on site, specifically seeking permission to sell smaller total quantities such as single smaller 32 ounce growlers and single 16.9-ounce bottles (Attachment B). The City’s Economic Development and Project Management Division are also working to develop ordinance language that would simplify the process for approval of accessory off-site alcohol sales for licensed manufacturing establishments.

In order to provide regulatory relief for local breweries, staff proposed the establishment of the land use classifications as stated above and also recommended allowing these unique businesses to sell their products in smaller quantities than the current minimum of 64-ounces.



The following language is proposed relative to off-premise alcohol sales:

- i. Limited Use permitted by right – *Brewpubs*, which are bona-fide eating establishments operated by breweries and/or distilleries licensed by the State of California (“State”) to manufacture malt beverages and/or distilled spirits and have an accessory brewing and/or distilling operation on site may sell alcoholic beverages manufactured by the microbrewery/distillery for off-site consumption as an accessory use to the establishment, subject to the following regulations:
  - Made-to-order food shall be available during all hours of operation.
  - A brewing or distilling operation must be operated on the premises.
  - No malt beverage products shall be sold in less than 32-ounce bottles. No distilled spirits shall be sold in less than 750 ml bottles.
  - Off-site sales under this provision shall be limited to the hours of 10:00 a.m. to 10:00 p.m. An exception to these hours may be requested through a CUP in accordance with Process Three.
- ii. NUP – *Brewpub Tasting Rooms* are similar to *Brewpubs*, but do not contain a bona-fide eating establishment. They are also licensed by the State to manufacture malt beverages and/or distilled spirits and operate an on-site brewing and/or distilling operation and they must offer on-site consumption of their products (“tasting rooms”). They may sell their malt-beverage products in no less than 32 ounces or distilled spirits in no less than 750 ml bottles, when also offering on-site consumption of their products, through an NUP in accordance with Process Two.
- iii. CUP – All other commercial establishments (restaurants, bars, and retail outlets) proposing to sell alcoholic beverages for off-premises consumption would still be required to obtain a CUP, subject to the standard conditions currently required under the CCPDO.

***The DCPC voted 18-4 to support the new provisions for this growing industry including the reduction in container size to 22 ounces. The CivicSD Board also voted to support these changes, but voted 4-3 to recommend that the minimum container size be 32 ounces in lieu of 22 ounces; therefore, the latter is the recommendation being brought forward.***

*Brewery Tasting Room*

Stone has submitted correspondence requesting consideration to allow their new retail stores to conduct off-site sales of smaller containers (see attached letters). Stone has opened several of these retail stores, including one in the South Park neighborhood at 2215 30<sup>th</sup> Street. These retail stores are a recent business model, which have unique

regulatory exceptions under the State Department of Alcoholic Beverage Control (ABC) regulations. Under the ABC regulations, breweries which are licensed in the State may obtain a “Duplicate Type 1 (large brewery) or Type 23 (small brewery)” license to open retail stores which also may or may not contain tasting rooms and/or restaurants with the following provisions:

- Approved “forthwith” without any public notification or opportunity for public protest.
- May or may not contain tasting rooms and/or restaurants
- Limited to selling their own products
- On-site brewing prohibited

In addition, the Duplicate licenses also enjoy a loophole in the City-wide alcohol regulations as the City requires a CUP for off-site alcohol sales (similar to the CCPDO regulations, but with some exceptions such as large markets), but specifically lists Type 20 (beer and wine only) and Type 21 (beer, wine and distilled spirits) licenses only, as the Type 1 and Type 23 Duplicate licenses were unknown to staff until very recently. Staff has met with representatives of the ABC and the San Diego Police Department who have expressed concern that these Duplicate licenses may proliferate since it does provide a loophole in the normal regulatory process.

When staff originally crafted the *Brewpub* and *Brewpub Tasting Room* provisions, it was under the misunderstanding that the Stone business model fit within these categories. However, the Type 1 and 23 Duplicate licenses specifically prohibit on-site brewing and Stone has expressed a desire to not have brewing operations in these stores, which are typically small (around 1,500 square feet) and are intended primarily for retail sales. Stone recently obtained approval of a CUP to locate a Type 1 Duplicate license store and tasting room at the northwest corner of B Street and Kettner Boulevard. Under the current and proposed CCPDO regulations, Stone will only be allowed sales in no less than the 64-ounce quantity required for retail businesses such as markets, liquor stores, and similar businesses.

Staff continues to evaluate this unique business model, but believes there is still difficulty in sufficiently distinguishing this business model from other retail markets. The sole distinguishing factor (since Stone and a market or liquor store both primarily sell alcoholic products for off-site consumption) is that it is owned by a brewery and has a Type 1 or Type 23 Duplicate license versus a Type 20 or 21 license. In addition, the City is investigating potential code amendments to address these types of businesses since they are currently allowed to open without the typical public notice and conditions required for other retail outlets selling alcohol. Therefore, given the number of issues associated with these types of licenses, staff continues to recommend that no changes be proposed at this time to the CCPDO until a more

comprehensive City-wide approach is developed and a broader community discussion can be conducted.

On September 11, 2013, the CMT received a presentation from Stone and its representative and voted to recommend the following:

- Establishment of an additional land use category such as “Brewery Tasting Room,”
- Brewery Tasting Rooms be required to obtain a CUP (Stone had requested lowering the review process to a NUP); and,
- Allow Brewery Tasting Rooms to sell their product in containers of 500 ml or larger (approximately 16.9 ounces, which is the size of bottles utilized for specialty beer products).

As a result of this recommendation, the CivicSD Board and DCPC Chairs requested that they be allowed to comment on this specific proposal in order to provide a recommendation to the Planning Commission. The DCPC will be considering this request at their September 18, 2013 meeting and the CivicSD Board will be considering this request at their September 25, 2013 meeting. Staff will provide the Planning Commission with a verbal update at the September 26, 2013 hearing for consideration.

A table summarizing the proposed amendments to the Separately Regulated Uses section has been included as Attachment C to this report.

7. **Parking, Loading, Traffic and Transportation Demand Management Standards (Section 156.0313)** – Modifications to Table 156-0313-A, Residential Off-Street Parking Space Requirements establishing downtown as a low-parking demand area for the purposes of calculating the reduced parking demand requirements for affordable housing developments under the Reduced Parking Demand Housing Regulations in the LDC Chapter 14, Article 2, Division 5 adopted by Council on November 13, 2012.

*The DCPC voted 17-0 with two recusals to support the staff recommendation.*

8. **Clean-up and Mapping** – A variety of minor edits occur throughout the text to enhance the organization and to clarify language in the CCPDO. For instance, the edits are proposed to reflect the name change from Centre City Development Corporation to CivicSD. Also, references to the Former Agency have been either removed or replaced with the City of San Diego. In addition, edits to Figures D, E, and G will be made to graphically correct the location of the proposed open space incorrectly shown on the block located at State, Union, B, and C streets to the block on Front, Union, B, and C streets consistent with Figures C and D and the maps in the DCP.

*The DCPC voted 22-0 to support the staff recommendation.*

The following is a **tentative** schedule for the processing of the proposed amendments:


<b>Date of Review</b>	<b>Action or Approval</b>
October 2013	Land Use and Housing Committee
November 2013	Council Public Hearing

**Conclusion:**


Staff recommends that the Planning Commission recommends that the Council approves CCPDO Amendment No. 2013-02 and introduces and adopts an ordinance amending the CCPDO (SDMC Chapter 15, Article 6, Division 3), as outlined in this report.

Respectfully submitted,

Concurred by:

  
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Lucy Contreas  
Senior Planner

  
\_\_\_\_\_  
Jeff Graham  
President

  
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Brad Richter  
Assistant Vice President, Planning

Attachments: A – Draft Strikeout/Underline Ordinance  
B – Correspondence regarding Off-Premise Alcohol Sales  
C – Separately Regulated Uses Summary Table  
D – Typical Off-Site Container Size List  
E – Public Correspondence