



MEMORANDUM
OFFICE OF THE
COUNTY EXECUTIVE OFFICER
COUNTY OF PLACER

DATE: February 9, 2016

TO: Honorable Board of Supervisors

FROM: David Boesch, County Executive Officer
By: Joel Joyce, Management Analyst II

SUBJECT: Ordinance prohibiting possession of open containers of alcohol

ACTION REQUESTED

Introduction of an Ordinance repealing Placer County Code Article 9.08 Offenses Against Public Peace and Decency and replacing with a new article 9.08 Offenses Against Public Peace and Decency and waive the oral reading.

BACKGROUND

On November 17, 2015, your Board received a presentation on various "quality of life" issues in Placer County as constituents have reached out to Placer County through emails and phone calls expressing concerns in their communities and the degradation of safety, cleanliness, and community character. In response, your Board directed staff to further review quality of life issues regarding how other jurisdictions address the problem and how the California Penal Code addresses these issues. Additionally, your Board directed staff to reach out to Dr. Robert Marbut who is consulting the County on such issues and how to avoid constitutionality concerns in regards to criminalizing vulnerable populations. On January 26, 2016 your Board adopted three ordinances relating to spray paint and graffiti prohibition, aggressive panhandling, and public urination/defecation.

The final action that your Board requested is that staff introduce an ordinance for consideration that would prohibit the possession of open containers of alcohol in public places.

There are two types of open container laws in California. The first is under Business and Professions Code section 25620 which states that it is against the law to have an open container while in public. The second law is under Vehicle Code sections 23220 to 23223, which prohibits a person, driver or passenger from having an open container while in a motor vehicle. The law is not punishing individuals for consuming an alcoholic beverage in public; instead, the law punishes mere possession of any open container even if you are not drinking from it.

Under Business and Professions Code section 25620, you can be charged with having an open container if you possess a can, bottle or other receptacle containing an alcohol beverage that is open or the seal is broken. You don't have to be consuming the alcohol; just having an open container of alcohol in your hand is unlawful. However, California is unique in that it does have a

state law on the books, but similar to states that have no law, the state law only applies to areas in which the "city, county, or city and county" have enacted an ordinance prohibiting an open container of alcohol in those areas.

Placer County does not have an ordinance in place and therefore it is currently legal to possess an open container of alcohol in public, even outside of permitted events.

Complicating matters, Placer County, through the California Business and Professions Code §25608.10, prohibits possession of containers of alcohol, whether open or closed by a person in a vessel on the portion of the Truckee River from the outfall of Lake Tahoe upstream of the Highway 89 Bridge in Tahoe City to the Alpine Meadows Bridge, as defined by §651 of the Harbors and Navigation Code, or a bather, as defined by §651.1 of the Harbors and Navigation Code, during the summer holiday periods that the Placer County Board of Supervisors prohibits the consumption of an alcoholic beverage or possession of an open alcoholic beverage container on the land portions along this portion of the river.

The ordinance for your Boards consideration would prohibit the possession of an open container of alcohol in public places such as parking lots, parks, open-space districts, streets, sidewalks, alleys, and buildings unless sanctioned by permitted events.

Attachment:

Ordinance

Before the Board of Supervisors County of Placer, State of California

In the matter of:

AN ORDINANCE REPEALING PLACER
COUNTY CODE ARTICLE 9.08 OFFENSES
AGAINST PUBLIC PEACE AND DECENCY
AND REPLACING WITH A NEW ARTICLE
9.08 OFFENSES AGAINST PUBLIC PEACE
AND DECENCY

Ordinance No.: _____

First Reading: _____

The following ORDINANCE was duly passed by the Board of Supervisors of the County
of Placer at a regular meeting held _____, by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chair, Board of Supervisors

Attest:
Clerk of said Board

THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER, STATE OF
CALIFORNIA HEREBY FINDS AND DECLARES THE FOLLOWING:

WHEREAS, the County of Placer ("County"), finds and determines that possession of open containers of alcohol on County owned real property or rights-of-ways is contrary to the public health, safety, and welfare; and

WHEREAS, the California Business and Professions Code Section 25620 states that any person possessing any can, bottle, or other receptacle containing any alcoholic beverage that has been opened, or a seal broken, or the contents of which have been partially removed, in any city, county, or city and county owned park or other city, county, or city and county owned public place, or any recreation and park district, or any regional park or open-space district shall be guilty of an infraction if the city, county, or city and county has enacted an ordinance that prohibits the possession of those containers in those areas or the consumption of alcoholic beverages in those areas; and

WHEREAS, the County, in the interest of public health, safety and welfare, finds and that there exists a significant risk of injury for pedestrians who are under the influence of alcohol while traversing in or around public right of ways and facilities; and

WHEREAS, the County has determined that it is reasonable and necessary, to provide restrictions on the possession of open containers of alcohol in a public places; and

WHEREAS, the passage of an ordinance restricting open containers of alcohol in public places would provide an enforcement mechanism to remedy the recent complaints about this type of activity; and,

NOW THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER ORDAINS AS FOLLOWS:

Section 1: Article 9.08 of the Placer County Code, entitled "Offenses Against Public Peace and Decency" is hereby repealed in its entirety and replaced with a new Article 9.08, entitled "Offenses Against Public Peace and Decency", which shall read as follows:

Article 9.08
OFFENSES AGAINST PUBLIC PEACE AND DECENCY

9.08.010 Open Containers – Public Places.

a. Except as otherwise provided in this article, it is unlawful for any person to possess any can, bottle, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, in any county street, alley, sidewalk, or right-of-way, or in any parking garage, parking lot, parking facility, parking building, public place, or public facility owned by the County. Public place shall include County parks and lands and facilities owned by any recreational and park district, or any regional park or open-space district and posted to prohibit the consumption of alcohol. Violation of this section shall be charged as an infraction.

b. "Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit or used for beverage purposes either alone or when diluted, mixed, or combined with other substances.

9.08.020 Open Containers – Alcohol Sales Establishments.

a. No person who has in his or her possession any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, shall enter, be, or remain on the posted premises of, including the posted parking lot immediately adjacent to, any retail package off-sale alcoholic beverage licensee licensed pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code, or on any public sidewalk immediately adjacent to the licensed and posted premises.

b. "Posted premises" means an area in which there is a clearly visible notice to the patrons of the licensee, parking lot and premises which states:

"It is unlawful to enter, be or remain on these premises, adjacent parking lot or adjacent public sidewalk with an open alcoholic beverage container. CPC 647e(a)"

9.08.030 Exceptions.

This article shall not apply where the consumption or possession is within premises for which a license has been issued pursuant to provisions of the California Business and Professions Code or a permit, license, agreement or similar entitlement has been obtained from the appropriate permitting authority for a private or public function within a public place. This article shall not apply when an individual is in possession of an alcoholic beverage container for the purpose of recycling or other related activity.

9.08.040 Possession or consumption of alcoholic beverages in designated area prohibited.

Any person consuming any alcoholic beverage or possessing any can, bottle, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which has been partially removed in the following designated areas shall be guilty of an infraction:

A. That area of land located in Kings Beach, California known as Agatam County Beach described as follows:

Beginning at a point on the low water line of Lake Tahoe at the intersection of the south-westerly extension of the south-easterly boundary of Lot 8 Block BF of Brockway Vista subdivision (M.O.R. Bk. D, Pg. 16);

Thence from said point of beginning north-easterly along said south-easterly boundary of said Lot 8 and the north-easterly extension thereof to a point on the north-easterly boundary of Brockway Vista Avenue, Placer County Road X7038;

Thence north-westerly along said north-easterly boundary of Brockway Vista Avenue to the south corner of Lot 141 Block BE of said Brockway Vista subdivision;

Thence north-easterly along the south-easterly line of said Lot 141 to the east corner of said Lot 141 of Brockway Vista subdivision;

Thence north-westerly along the north-easterly boundaries of Lots 141, 142, 143 and 144 Block BE of Brockway Vista subdivision to the north corner of Lot 144, to a point on the south-easterly side of Coon Street, Placer County Road X7026;

Thence north-easterly along the south-easterly boundary of Coon Street to its intersection with the south-westerly boundary of California State Highway 28;

Thence north-westerly along said south-westerly boundary of California State Highway 28 to the easterly corner of Lot 42 Block B of said Brockway Vista subdivision, said point being the north-easterly corner of the Kings Beach State Recreation area;

Thence along the easterly boundary of said Kings Beach State Recreation Area to a point on the low water line of Lake Tahoe;

Thence south-easterly along the low water line of Lake Tahoe to the point of beginning.

Excepting therefrom any land owned by the state of California for which an adopted management plan or other authorized action expressly provides for, or otherwise governs, the consumption of alcoholic beverages, or any land or buildings owned by the state of California for which a lease or rental agreement does not prohibit the consumption of alcoholic beverages.

B. That area of land located in Kings Beach, California known as Buck's/Speedboat County Beach located at the end of Speedboat and Harbor Avenues in Brockway, Lake Tahoe.

C. That area of land located in Kings Beach, California known as Secline Beach including the beach, day-use area, streets and parking lot.

D. From July 1st to July 6th , inclusive, each year, that area of land located in Homewood, California known as Chambers Landing Beach described as follows:

Recreation Area X (4.64) acres) of Chambers Landing II, Tract No. 553, "A condominium Project Being Lot 1 of Chambers Landing I Subdivision" as said land is shown and designated on that certain map filed for record on January 29, 1982 in Book N of Maps at Page 50, Official Records, Placer County, California. (Ord. 5676-B § 1, 2012; prior code § 12.5)

9.08.050 Possession or consumption of alcoholic beverages in designated area prohibited—Exceptions.

Exceptions to Section 9.08.040 of this code may be granted in writing by the county executive officer or his/her designee upon consultation with the director of parks and recreation of the North Tahoe public utility district, operator of the adjoining Kings Beach State Recreation Area. (Prior code § 12.5-1)

9.08.060 Possession or consumption of alcoholic beverages along specified reaches of the Truckee River during certain summer holiday periods prohibited.

A. Prohibition—Geographic Extent. No person may consume any alcoholic beverage or possess any can, bottle, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which has been partially removed in the following designated area along the Truckee River:

1. Those areas extending from the edge of the water upland for a distance of three feet on both sides of the river, beginning at the outfall of Lake Tahoe and ending at the upstream edge of the Alpine Meadows Bridge.

2. This prohibition shall also extend to all islands, rock outcroppings, and any other land or structures within the confines of the river.

3. This prohibition includes all bridges and pipeline crossings not otherwise exempted herein.

B. Timing of Prohibition. This prohibition shall only apply during summer holiday periods that the board of supervisors shall designate by resolution.

C. Exemptions.

1. The provisions of this prohibition shall not apply to the Highway 89 Bridge.

2. The provisions of this prohibition shall not apply to businesses that possess a valid liquor license issued by the California Department of Alcohol Beverage Control.

3. The provisions of Section 9.08.020 shall not be applicable to this section.

D. Penalty. Violation of this section is an infraction, punishable by a fine not to exceed one hundred fifty dollars (\$150.00) for the first violation, five hundred dollars (\$500.00) for the second violation, and one thousand dollars (\$1,000.00) for the third violation occurring in any calendar year. (Ord. 5507-B § 1, 2008)

9.08.070 Violations an Infraction

Notwithstanding any other provisions of this Code to the contrary, violation of the provisions of this article shall constitute and be punishable as an infraction.

9.08.080 Severability

The provisions of this article are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be invalid, such invalidity shall not affect the other provisions or application of this chapter.

SECTION 2: This ordinance shall take effect and be in full force thirty (30) days after the date of its passage. The Clerk is directed to publish this ordinance, or a summary thereof, within (15) days in accordance with government code section 25124.