



Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms from Licensed Alcohol Outlets



ALCOHOL & DRUG PROGRAMS
Ventura County Health Care Agency

The intent of this report is to provide useful information to municipal governments, private institutions and community coalitions who are formulating responses to the problems created by retail availability of alcohol.

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WITH MODEL ORDINANCE AND BIBLIOGRAPHY

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Introduction

Why is regulating retail alcohol outlets important?

Alcohol is a legal product, and alcohol retailers represent an important business sector of California's economy. Yet, unlike most other retail products, alcohol is associated with a wide variety of community and societal problems, including violence, sexual assault, motor vehicle crashes, other forms of injury, and family disruption. The problems are particularly acute among young people. Even relatively minor problems often associated with alcohol sales, such as loitering, graffiti, and noise, can constitute public nuisances that adversely affect neighboring businesses and residents and contribute to neighborhood blight.ⁱ Because of these risks to public health and safety, California communities are taking proactive steps to promote responsible alcohol retail practices and reduce the risks associated with alcohol sales.

Research has shown that five key variables affect the nature and extent of alcohol problems associated with alcohol retail outlets:

Number of alcohol outlets: High numbers of outlets are associated with increased alcohol problems (sometimes referred to as “outlet proliferation”).

Types of alcohol outlets: Outlets such as bars and nightclubs, which have alcohol as their primary business, also create increased risks of problems.

Concentration of outlets: In many communities, the total number of outlets is not excessive, but the outlets are clustered in certain neighborhoods. Over concentration is associated with increased incidence of alcohol problems.

Locations of outlets: Retail outlets next to sensitive land uses such as schools, playgrounds or other locations where youth congregate can contribute to underage drinking problems.

Retail practices: Sales and service practices are particularly important variables. Sales to minors and intoxicated persons as well as public nuisance activities can all be reduced through responsible business practices, which can in turn be promoted through effective zoning provisions and enforcement practices.

Taking comprehensive and proactive steps to plan the number and location of alcohol outlets and to regulate how they are operated, while working collaboratively with alcohol retailers, can reduce alcohol problems, enhance the community's business environment, and contribute to overall community health and safety.ⁱⁱ

What is the legal framework for regulating alcohol retail outlets in California?

The California State Alcoholic Beverage Control (ABC) Act and local regulation provide the basic framework for addressing the five alcohol availability variables described above. The interaction of the variables involves complex legal concepts and strategies that can make them difficult to use and understand, not only for residents but also for policy makers.

The California Alcoholic Beverage Control (“ABC”) Act and the doctrine of state preemption: The ABC Act establishes the foundation for alcohol control in the state. The Act specifies the types of alcohol outlets and licenses, restricting their location and number to some degree, and providing minimum standards for operation. The California Department of Alcoholic Beverage Control (“the state ABC Department”) licenses the outlets and is the primary agency responsible for enforcing the Act’s provisions.

Perhaps the most complex legal issue faced by communities in adapting the basic framework of the ABC Act to local conditions is the constitutional doctrine of “state preemption.” The California Constitution provides that the state has “the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages.” (Cal. Const., Article XX, § 22.) Although not unique to California, the doctrine of preemption puts California at one extreme among the states in terms of allowing local communities to establish and enforce their own alcohol availability structure.ⁱⁱⁱ

Fortunately, the term “exclusive” describing the powers of the state through its ABC Department is not applied literally. Both the California legislature and the courts recognize that with respect to the regulation of alcohol outlets, important interests of cities and counties overlap with those of the state. Local zoning, land use, and police powers are traditional, well-established local powers that must be protected.^{iv} The exercise of these powers, however, is constrained by the state constitution and the state ABC Act. Local communities cannot contradict state legal provisions. The extent of local authority has been slowly and steadily expanding over the last two decades, although that authority still is constrained by state law and may still be subject to court challenge. It is therefore critical to coordinate local actions with state law and the state ABC Department’s practices.

New and existing retail outlets: A key distinction in applying the state preemption doctrine involves the status of the specific licensed premise as a “new” or “pre-existing” outlet at the time a city or county enacts a new ordinance or regulation. A retailer whose business is already in place receives greater protection under state law than outlets that are proposed following the local action.^v Thus, a city that wants to restrict alcohol outlets near schools or limit the types of alcohol products sold at the outlet has only limited authority to impose the new restrictions on an existing outlet, but can prohibit a new outlet from locating in the restricted zone or selling the restricted product. This best practices guide describes in detail the legal tools available to communities for exercising regulatory authority over both new and pre-existing outlets.

What tools do communities have to ensure a healthy retail alcohol environment?

Although constrained by state law, communities nevertheless have substantial authority to regulate alcohol retail practices. Regulatory powers include:

Conditional Use Permit Ordinances (CUPs)

CUPs are the primary local regulatory tool for regulating *new alcohol outlets*, relying on a locality’s authority to regulate land uses through its zoning powers. State law provides that a city or county can require that an applicant to the state ABC Department obtain a CUP before it can be licensed by the state.^{vi} The CUP application involves a review process, that may include public hearings. These hearings

provide the applicant, public officials, and neighbors the opportunity present evidence regarding whether the application should be granted and, if so, with what conditions.^{vii} The CUP ordinance provides basic guidelines for making these determinations and can include mandatory or discretionary rules and conditions that can be designed to promote safe and responsible business practices. It allows a city to consider special uses that may be essential or desirable to a particular community or neighborhood. CUP ordinances include procedures for enforcing their provisions, usually through administrative procedures already in place under a city's general zoning code.

“Deemed Approved” Ordinances (DAOs)

DAOs constitute the basic tool for regulating “pre-existing” outlets – those retail establishments that were in existence prior to a city or county’s CUP ordinance. They are also grounded in the authority of local government to regulate land uses through its zoning powers. Because of the state preemption doctrine, the retail practices that can be addressed by DAOs are strictly constrained. For example, the ordinances cannot specify the location of a retail outlet or restrict the types of alcohol sold or the hours of operation. Instead, DAOs focus on retailer activities and practices (called “performance standards”) that address public nuisance problems and are not directly associated with the actual sale of alcohol. Prohibited activities can include loitering, graffiti, and illegal behavior (such as violating state laws prohibiting sales to minors, illegal drug sales). If an outlet violates the ordinance’s general performance standards, the outlet is subject to a review process, during which the outlet, the city, and the public have an opportunity at a public hearing to determine whether a violation has occurred and, if so, whether the outlet will have to conform to specified conditions of approval to avoid revocation of its deemed approved status.^{viii}

Non-Zoning Local Authority to Regulate Alcohol Outlets

Communities have other tools for regulating alcohol outlets that can be used in conjunction with or addition to CUPs and deemed approved ordinances. For example, they can address public nuisance activities associated with alcohol retail outlets through nuisance abatement ordinances. These typically apply to all commercial establishments, not just to alcohol retail outlets, to insure that there is no conflict with the state preemption doctrine.^{ix} Communities can also require Responsible Beverage Service (RBS) training for alcohol retail owners, managers and staff in a separate ordinance, relying on its police powers.

Finding of “Public Convenience or Necessity”

California law allows local jurisdictions to participate in the ABC Department’s licensing procedures for some outlets to a limited degree. The law provides definitions for geographic areas that have high rates of crime and an over-concentration of retail alcohol outlets. When a new outlet is proposed in these zones, the applicant must first obtain a formal finding that the new business will serve “public convenience and necessity” from the city or county where the license is to be located.^x

PREVENTION

Model Ordinance Summary

A. Introduction

The Model Ordinance is designed as a toolbox for communities integrating several of today's best practices in municipal regulation to reduce alcohol-related harms from licensed outlets.^{xi} It assumes, and has as a core recommendation, that the ordinance will include both CUP and Deemed Approved provisions so that it covers all alcohol retail outlets in the community—both new and pre-existing outlets.

The Model Ordinance includes provisions and commentaries: the provisions provide the framework and options to be considered; the commentaries provide the rationale and legal basis for the provision. The best choices for one community may not be relevant to another. The Model Ordinance in many instances does not make recommendations for or against specific provisions. This variability reflects one of the strengths of this approach to the regulation of alcohol retail sales: CUP and Deemed Approved provisions are flexible legal instruments that can be adapted to local conditions. This strength, particularly combined with the complex state law under which these provisions operate, creates a complex matrix that can sometimes be confusing and overwhelming to non-lawyers. This Model Ordinance Summary is designed to provide a road map to facilitate understanding and effective dialogue among key constituencies involved in its adaptation and adoption. Provisions that deserve special attention by constituencies involved in the process are highlighted as “Topics for Special Review.”

B. General Provisions (Applicable to both CUP and Deemed Approved Provisions)

4. Title and Findings (Introductory Sections)

The CUP ordinance begins with its title, general purpose and findings, which apply to both the CUP and Deemed Approved portions of the ordinance. The findings establish the need for the ordinance, listing the specific problems that are to be alleviated. These should include reference to relevant research studies and be adapted to local circumstances, including any local data regarding alcohol problems and their link to retail alcohol sales. The findings and purpose sections are important to establish the city's rationale and authority to take action and to meet legal requirements for establishing a nexus between the regulations imposed and the problems being addressed.

5. Definitions (Section 100.01)

The ordinance endeavors to provide legal definitions for all of the key terms in the document. As with the findings section, the definitions apply to both the CUP and Deemed Approved portions of the Model Ordinance.

TOPIC FOR SPECIAL REVIEW: FULL-SERVICE RESTAURANT

An additional option not included in the model provisions involves the inclusion or exclusion of “full service restaurants.” The Model Ordinance provides a definition of restaurants, but is neutral regarding whether restaurants should be treated differently from other types of retail alcohol outlets. Many cities and counties, for example, exclude restaurants from their ordinances, provided that they meet strict criteria in terms of food sales, hours of operation, kitchen facilities, among other factors, to insure that a restaurant does not transform into a more problematic mode of business. See Contra Costa County Ordinance, Appendix 3. These criteria are included in the model definition. Options include: treating restaurants similarly to other types of outlets; exempting them from the ordinance entirely; or developing separate standards applicable to restaurants. If restaurants are excluded, the definitional criteria should be carefully reviewed.

review

6. General Administration and Enforcement Sections (Sections 100.02, 100.03, 100.04, 200.03)

Local officials responsible for administration and enforcement are named and their authority to enter and inspect retail alcohol premises specified. The ordinance allows for enforcement of its provisions through actions brought by private parties.

C. Conditional Use Permit Provisions

1. Purposes and Applicability (Sections 200.01, 200.03)

The Purposes section augments the findings in the introductory section, focusing on the rationale for requiring CUPs for new alcohol outlets. The provisions apply to all new alcohol retail outlets (subsequent to the passage of the ordinance).

2. Restrictions Regarding the Location and Density of Retail Alcohol Outlets (Sections 200.02, 200.04)

TOPIC FOR SPECIAL REVIEW: OUTLET LOCATION

The ordinance has three key provisions related to retail outlet location:

- **Commercial zone restriction.** Alcohol outlets should only be allowed within existing commercial zones of a local community. These zones should be defined elsewhere in a city or county's zoning ordinance.
- **Model "spacing" requirements.** Specific distances from sensitive uses such as playgrounds, schools, hospitals, high crime districts, etc.
- **Distance requirements between outlets.** The Model Act provides that no more than four alcohol retail outlets should be allowed within a 1,000 foot radius of each other.

These are general recommendations that should be reviewed and amended as needed to address local conditions. Options include: adding additional sensitive land uses, further restricting locations to subsets of commercial zones, and increasing distance requirements. They also may focus on particular types of alcohol outlets. For example, restaurants or grocery stores with relatively limited alcohol sales may be treated differently from bars, nightclubs, or liquor stores.

review

3. Operational Standards, Training Requirements, and Conditions of Approval (Sections 200.05, 200.09)

The Model CUP provisions have three distinct sections addressing the retail practices of new alcohol outlets. **Operational standards** are mandatory requirements that apply to all outlets and are typically general in nature, e.g., prohibitions against public nuisance activities and activities that violate state or local laws. One standard refers to is an annual conditional use permit fee imposed on all new retail outlets to defray the regulatory costs for issuing licenses and permits, performing investigations, inspections, and audits, and the administrative enforcement and adjudication thereof and the cost of services and programs provided to permittees. See below for further discussion of this fee provision.

TOPIC FOR SPECIAL REVIEW: RESPONSIBLE BEVERAGE SALES AND SERVICE TRAINING

The Model Ordinance provides that licensees are required to provide **Responsible Beverage Service (RBS) training** to all owners, managers, supervisors, and staff who serve or sell alcohol. Communities may wish to phase this requirement in over a period of time and may want to augment it with more specific requirements regarding the content of the training, certification of training programs, refresher courses, administration and enforcement. This requirement can be included in the CUP ordinance by reference to a separate RBS training ordinance. A model of such an ordinance has been developed as a companion document.

review

Conditions of Approval are found in a separate section of the Act and are closely tied to Operational Standards. In general, they are more specific than Operational Standards and can be either standard or discretionary. If standard, they apply to all new outlets automatically; if discretionary, the permitting agency considers their applicability on a case-by-case basis and tailored to the specific application and the surrounding neighborhood.

Potential Conditions of Approval included as Best Practices in the Model Ordinance:

- Soundwalls
- Graffiti Removal
- Exterior Lighting
- Trash Receptacles
- Pay Telephones
- Complaint Response—Community Relations Program
- Prohibited Activities (e.g. pool tables, video games)
- Security Cameras
- Limitations on signs and advertising on windows of doors in off-sale outlets
- Prohibited Alcohol Products (e.g. mini-bottles, beer over certain alcohol content, etc.)
- Chilled Alcoholic Beverages
- Hours of Operation
- Paper or Plastic Cups
- Size of alcohol signage
- Loitering
- Drug Paraphernalia
- Prohibited Vegetation (that can be used as a hiding place)

TOPIC FOR SPECIAL REVIEW: CONDITIONS OF APPROVAL

Conditions of approval are a critical component of the CUP ordinance and should be tailored to local conditions and citizen concerns. The list provided in the Model Ordinance can be treated as suggestive – some may not be relevant to a given community while others may need to be added. Inclusivity is recommended; if it is uncertain whether a given condition is relevant, it can be treated as discretionary and used only if warranted for particular retail outlets. With experience, a community may decide that a discretionary condition should be treated as standard, which streamlines the CUP application process. The Model Ordinance does not differentiate between standard and discretionary conditions in light of the variability of treatment across communities.

review

4. CUP Ordinance Administration (Sections 200.06, 200.07, 200.08, 200.10, 200.11, 200.12)

The Model Ordinance specifies required information in the CUP application and provides a framework for review, approval or denial, revocation, and appeals by applicants. These provisions need to be adapted to conform to a city or county's existing structure for handling CUP applications. They include recommendations regarding specific findings that should be made by the relevant decision-making body. See relevant sections and commentaries for legal requirements that should be adhered to in administering the ordinance.

D. Deemed Approved Provisions

1. Purposes and Applicability (Sections 300.01, 300.02, 300.03)

The purposes section parallels the similar provision in the CUP portion of the ordinance, focusing on the rationale for regulating pre-existing businesses. All alcohol retail establishments in existence as of the effective date of the passage of the ordinance are given automatic deemed approved status. A critical issue involves when a pre-existing outlet is brought under the purview of the CUP provisions. This involves strict legal guidelines that are described in detail in the ordinance itself. In general, if a business changes its “mode and character” (e.g., changes from a restaurant to a nightclub), closes for 90 days or more, or ceases to operate under an ABC Act license, it is treated as if it is a new alcohol retail outlet under the Ordinance, therefore requiring the operator to obtain a CUP (and thus leading to potentially stricter regulation).

2. Deemed Approved Performance Standards (Section 300.04)

This section provides the standards applicable to all deemed approved alcohol retail businesses. As discussed above, the standards focus on prevention and abatement of public nuisance activities such as disturbance of the peace, illegal drug activity, public drinking in public, harassment of passersby, gambling, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, etc. They require licensees to abide by federal, state and local laws and include general provisions regarding the protection of public health and safety, and compatibility with surrounding properties.

3. Training Requirements (Section 300.05)

The training requirements found in the CUP provisions are duplicated here.

4. Outreach and Education Program and Monitoring and Enforcement Activities (Section 300.06, 300.08)

TOPIC FOR SPECIAL REVIEW: OUTREACH, EDUCATION, MONITORING, AND ENFORCEMENT

The outreach, education, monitoring and enforcement activities directed at deemed approved licensees described in this section are essential components to an effective ordinance. The outreach and educational program is designed as a proactive approach to encouraging compliance with the Ordinance (both the CUP and Deemed Approved provisions), enhancing community-retailer communication, and, in general, promoting responsible business practices. The section also establishes a Monitoring and Enforcement Activities (MEA) unit in the city government responsible monitoring alcohol retail businesses and enforcing the provisions of the ordinance. A police officer assigned full time to this unit is envisioned. The specific makeup of these activities should be tailored to local needs and resources. A fee provision for defraying costs is described below.

5. Annual Administration Program Fee (Section 300.08)

TOPIC FOR SPECIAL REVIEW: OFFSETTING COSTS

The Model Ordinance envisions the costs of the outreach, education, monitoring and enforcement activities described above to be offset by a fee imposed on both new and pre-existing outlets. The fee amount is not included in the Model Ordinance and instead recommends that it be set by the city council or board of supervisors. The fee is recommended to insure effective implementation of the ordinance. Funding a police officer assigned to conduct these functions is critical and probably best accomplished with a special fee. The fee can be structured in a variety of ways – e.g., at a set rate, based on the type of outlet, based on an analysis of risk factors, or based on level of alcohol sales. The City of Ventura uses a risk factor scale that is recommended. See Appendix 4. The fee should be dedicated to the outreach, education, monitoring and enforcement activities and revenues should not exceed actual costs.

6. Administration and Enforcement (Sections 300.07, 300.09)

A substantial portion of the Model Ordinance addresses the administration of the deemed approved provisions, focused on the MEA Unit. Specific topics include: notification to licensees of deemed approved status; inspection, notice of violations, re-inspection, and citation procedures; hearing officer appointment and procedures for hearings; penalties; public hearing procedures; and appeals. The model provisions address legal due process requirements and are drawn from existing deemed approved ordinances.

Model Conditional Use Permit—Deemed Approved Alcoholic Beverage Sales Regulations Ordinance

The City Council of the City of _____ hereby ordains as follows:

TITLE

(A) This Ordinance shall be known as the Conditional Use Permit — Deemed Approved Alcoholic Beverage Sales Regulations Ordinance.

(B) This ordinance requires land use permits for newly established alcoholic beverage sales activities, confers deemed approved status for existing alcoholic beverage sales activities, and provides standards and an administrative hearing process to review violations of those standards in order to protect the general health, safety, and welfare of the residents of the City of _____ and to prevent nuisance activities where alcoholic beverage sales occur.

FINDINGS

The City Council of the City of _____ finds the following:

(A) Research shows that areas with greater densities of on-site and off-site

alcohol outlets also generally have higher rates of motor vehicle crashes, alcohol-related hospital admissions, pedestrian injury collisions, self-reported injury, and drinking and driving among both young people and adults. In fact, research from California found that a 1% increase in outlet densities was associated with a 0.54% increase in alcohol-related crashes. Under these conditions, a city with 50,000 residents and 100 outlets would experience an additional 2.7 such crashes for each additional outlet opened.¹

(B) The relationship between alcohol outlet density and violent crime has been well documented. Communities with 100 or more alcohol outlets and a population of 50,000 or more can expect an annual increase of 2.5 violent crimes each year for every alcohol outlet added in the area.² Criminologists studying the distribution of violent crimes have found on-site alcohol outlets such as bars and restaurants were among the “hottest” of the “hot spots” for such incidents.³ In one large U.S. city, researchers found city blocks with bars had higher rates of assault, robbery and rape than other blocks, even after the analysis accounted for the effects of unemployment and poverty.⁴

¹ Treno, A.J.; F.W. Johnson, L. Remer and P.J. Gruenewald, “The impact of outlet densities on alcohol-related crashes: A spatial panel approach,” *Accident Analysis and Prevention* (2007) 39: 894-901.

² Scribner, R.A., D.P. MacKinnon, J.H. Dwyer. “The risk of assaultive violence and alcohol availability in Los Angeles County,” *American Journal of Public Health* (1995) (85)3: 335-340.

³ Sherman, L.W., P.R. Gartin, M.E. Buerger, “Hot spots of predatory crime: Routine activities and the criminology of place,” *Criminology* (1989) 27(1): 27-55.

⁴ Roncek, D.W., P.A. Maier, “Bars, blocks, and crimes revisited: linking the theory of routine activities to the empiricism of “hot spots,” *Criminology* (1991) (29)4: 725-53.

(C) The Community Preventive Services Task Force an independent, nonfederal, unpaid body appointed by the Director of the Centers for Disease Control and Prevention (CDC), systematically reviewed the scientific evidence on the effectiveness of limiting alcohol retail outlet density for preventing excessive alcohol consumption and related harms. The Task Force concluded: “On the basis of the reviewed evidence, the Task Force found sufficient evidence of a positive association between outlet density and excessive alcohol consumption and related harms to recommend limiting alcohol outlet density through the use of regulatory authority (e.g., licensing and zoning) as a means of reducing or controlling excessive alcohol consumption and related harms.”⁵

(D) Drinking driving incidents often originate in bars, restaurants and clubs. The Ventura County Drinking Driver Program has been collecting Place of Last Drink (POLD) survey data since 2001. Of the 4,840 offenders surveyed in 2007 and 2008, 47.6% reported they had taken their last drink at a bar, club, or restaurant. The same POLD data also showed that cities in Ventura County with high concentrations of on-sale retail outlets had disproportionately high POLD rates.⁶

(E) Nuisance and criminal activities such as drug dealing, public drunkenness, loitering, and other behaviors that negatively impact neighborhoods occur with disproportionate frequency at and around the premises of on-site and off-site sale alcohol uses.

(F) Neighborhood character can change over time and the careful regulation of nuisance activity by on-site and off-site alcohol uses will help to ensure that such uses

do not contribute to the deterioration of neighborhoods.

Neighborhood character can change over time and the careful regulation of nuisance activity by on-site and off-site alcohol uses will help to ensure that such uses do not contribute to the deterioration of neighborhoods.

(G) The Ventura County Behavioral Health Department produced an Issue Briefing in September 2008 entitled: “*Alcohol Retail Outlet Density Affects Neighborhood Crime and Violence.*” The Issue Briefing summarized numerous research studies and concluded: “The research strongly suggests that limits on outlet density may be an effective means of reducing alcohol problems, especially violence. States and communities can use controls on the number and location of alcohol outlets as a tool for reducing violence, creating a safer and healthier alcohol environment, and improving the quality of life of a community.”⁷

(H) Studies indicate the rate of alcohol-related crashes can be reduced by Responsible Beverage Service training programs, particularly when combined with attention to management policies and law enforcement monitoring.⁸

(I) Research suggests that differing types of alcoholic beverage sales activity

⁵ Task Force on Community Preventive Services. “Recommendations for reducing excessive alcohol consumption and alcohol-related harms by limiting alcohol outlet density.” *Am J Prev Med* 6: pp. 570–71 (2009).

⁶ Ventura County Behavioral Health Department, “*Spotlight IV: Place of Last Drink Survey – Bars, Clubs and Restaurants.*” Ventura, California (2009).

⁷ Ventura County Behavioral Health Department. “*Issue Briefing: Alcohol Retail Outlet Density Affects Neighborhood Crime and Violence.*” Ventura, CA (September 2008).

⁸ Babor, T. et al. “*Alcohol: No Ordinary Commodity, 2nd Edition.*” NY: Oxford University Press (2010).

establishments create larger risks of public health and safety problems. Bars, nightclubs and liquor stores are more likely than restaurants to be associated with late-night disruptions and violence, and bars are more likely to be identified as places of last drink prior to drinking driving incidents.⁹ Law enforcement inspections and investigations can reduce these risks.

(J) The links documented above between alcoholic beverage sales activity establishments and, crime, violence, public nuisance activities and other public health and safety problems place a financial burden on local law enforcement agencies. Conducting regular inspections and investigations of alcohol retail outlets will alert both retailers and law enforcement personnel to problems with the retail operation, promote Responsible Beverage Service practices, and reduce law enforcement costs by reducing the number of law enforcement calls for service and incidents that adversely affect community public health and public safety.

(K) [Local data on nuisance activities by alcoholic beverage sales activity establishments in the city]; and

(L) The City of _____ recognizes its responsibility to enforce the law and the need for a partnership with alcoholic beverage sales activity establishments, the City, including the Police Department and the City Attorney, and the community to address illegal activities in proximity to an alcoholic beverage sales activity.

ARTICLE I. General

Section 100.01. Definitions

The meaning and construction of these words and phrases, as set forth below, shall apply throughout, except where the context clearly indicates a different meaning or construction.

As used in this Chapter:

(A) “Alcoholic beverage” means alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits, wine, or beer, that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances, the sale of which requires a ABC license.

(B) “Alcoholic beverage sales activity” means the retail sale of alcoholic beverages for onsite or offsite consumption.

(C) “Alcoholic beverage sales activity establishment” means an establishment where an alcoholic beverage sales activity occurs. Alcoholic beverage sales activity establishments include but are not limited to the following recognized types of establishments: liquor stores; beer and wine stores; convenience market; markets; neighborhood specialty food markets; retail sales establishments; wine shops; service stations; taverns; clubs; cocktail lounges, ballrooms, cabarets, dance bars, piano bars; billiard or game parlors, bowling alleys; nightclubs cafes; dance halls; bars; restaurants with bars; full-service restaurants; and fast food establishments.

(D) “California Department of Alcoholic Beverage Control” or “ABC” refers to the department of the State of California empowered to act pursuant to Article 20, section 22, of the California Constitution and authorized to administer the provisions of the Alcoholic Beverage Control Act.

(E) “Condition of approval” means a requirement that must be carried out by: (1) a new alcoholic beverage sales activity to exercise a land use permit; or (2) a legal nonconforming alcoholic beverage sales activity to comply with deemed approved performance standards and to retain its deemed approved status.

⁹ Graham, K., Homel, R. “Raising the Bar: Preventing Aggression in and Around Bars, Pubs and Clubs.” Portland, OR: Willan Publishing (2008). Fell, J., Tippetts, S. Voas, R. “Drinking characteristics of drivers arrested for driving while intoxicated in two police jurisdictions.” *Traffic Injury Prevention* 11: pp. 443–452 (2010). Gruenewald, P. Freisthler, B., Remer, L., LaScala, E., Treno, A. “Ecological models of alcohol outlets and violent assaults: crime potentials and geospatial analysis.” *Addiction* 101: pp. 666-677.

(F) **Conditional Use Permit Fee** means a levy imposed on new permittees for: (1) A specific government service or product provided directly to the fee payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product; or (2) The reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, and the administrative enforcement and adjudication thereof.

(G) “Crime reporting districts” means geographical areas within the boundaries of the City of _____ that are identified by the City of _____ Police Department in the compilation and maintenance of statistical information on reported crimes and arrests.

(H) “Deemed approved activity” means any legal nonconforming alcoholic beverage sales activity, as defined in subsection (R). Such activity shall be considered a deemed approved activity as long as it complies with the deemed approved performance standards set forth in section 300.04.

(I) **Deemed Approved Status Fee** means a levy imposed on all deemed approved alcoholic beverage sales activities existing and operating on the effective date of this Chapter for: (1) A specific government service or product provided directly to the fee payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product; or (2) The reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, and the administrative enforcement and adjudication thereof.

(J) “Deemed approved status” means the status that a deemed approved activity retains as long as it complies with the deemed approved performance standards set forth in section 300.04.

(K) “Financial interest” means any direct or indirect interest in the management, operation, ownership, profits or revenue (gross or net) of an alcoholic beverage sales activity establishment. A “financial interest” means a monetary investment in an alcoholic beverage sales activity establishment or the premises and business enterprises directly related to it.

(L) Full-service restaurant” means a place that: (1) is primarily, regularly and in a bona fide manner used and kept open for the serving of at least dinner to guests for compensation; and (2) has kitchen facilities containing conveniences for cooking an assortment of foods that may be required for those meals; and (3) obtains a minimum of sixty-seven percent of its gross receipts from the sale of meals and other food and drink non-alcoholic products; and (4) submits evidence of total meal and other non-alcoholic product sales to county officials upon request for purposes of determining its status under this ordinance. A place that sells or serves only sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or only snack foods, or both, is not a full-service restaurant.

(M) “Hearing officer” means administrative hearing officer, as provided for in section 300.11(A).

(N) “Interested person” means any member, stockholder, officer, director, partner, principal, associate, individual, trustee, or combination thereof holding any financial interest in a permit, or who has the power to exercise influence over the operation of an alcoholic beverage sales activity establishment or a permittee.

(O) “Illegal Activity” means an activity, which has been finally determined to be in noncompliance with the deemed approved performance standards in section 300.04 of this Chapter. Such an activity shall lose its deemed approved status and shall no longer be considered a deemed approved activity.

(P) **Law Enforcement Call for Service** means any instance in which law enforcement personnel responds to a contact originating

from an alcoholic beverage sales activity establishment requiring law enforcement intervention.

(Q) Law Enforcement Problem Establishment means an alcoholic beverage sales activity establishment that has been the subject of a law enforcement call for services; and (1) the call for service resulted in a citation being issued for a violation of any of the permittee's conditions of operation or deemed approved performance standard or a finding that the permittee violated State or local law related to service of alcoholic beverages to minors or intoxicated persons; and (2) the Chief of Police has determined that the establishment has failed to take corrective action within a reasonable period of time.

(R) "Legal nonconforming alcoholic beverage sales activity" or "legal nonconforming activity" means an alcoholic beverage sales activity for which a valid state of California Alcoholic Beverage Control license has been issued and used in the exercise the rights and privileges conferred by the license as of the effective date of this Chapter and that, because of the Chapter's requirement of a conditional use permit to establish a new alcoholic beverage sales activity, is a legal nonconforming use as of the effective date of this Chapter. A legal nonconforming activity shall be considered a deemed approved activity as long as it complies with the deemed approved performance standards as set forth in section 300.04, and shall no longer be considered a legal nonconforming activity.

(S) "License" means a license authorized to be issued to a person by the ABC to sell alcoholic beverages pursuant to Division 9 of the Business and Professions Code.

(T) "Licensee" means any person holding a license issued by the ABC to sell alcoholic beverages. For purposes of this Chapter the licensee is the business owner.

(U) "Manager" means anyone who represents the interest of the permittee in the operation of an alcoholic beverage sales activity

establishment whose duties include but may not be limited to: the making or changing of policy; hiring or firing of employees; or generally exercising independent judgment in the operation of the alcoholic beverage sales activity establishment. A manager need not have a financial interest in the alcoholic beverage sales activity establishment. A manager must be an employee of the permittee, or if not an employee, then a person having a financial interest as a partner, a shareholder, or trustee of the alcoholic beverage sales activity establishment (but not otherwise).

(V) "Off-site alcoholic beverage sales activity establishment" means an alcohol beverage sales activity for consumption of an alcoholic beverage off the premises where sold.

(W) "On-site alcoholic beverage sales activity establishment" means an alcohol beverage sales activity for consumption of an alcoholic beverage on the premises where sold.

(X) "Operational standards" means regulations prescribed in section 200.05 of this Chapter.

(Y) "Performance standards" means regulations prescribed in section 300.04 of this Chapter.

(Z) "Permit" means a conditional use permit issued pursuant to Article II of this Chapter.

(AA) "Permittee" means the individual or entity that owns an alcoholic beverage sales activity establishment and to whom a conditional use permit to operate an alcoholic beverage sales activity establishment has been issued by the City of _____.

(BB) "Premises" means the actual space within a building devoted to alcoholic beverage sales.

(CC) "Training requirements" means the regulations prescribed in section 200.05(B) or section 300.05 of this Chapter.

(DD) "Transfer of a financial interest" means the assignment, bequest, conveyance, demise,

devise, gift, grant, lease, loan, sublease or transfer of a financial interest in an alcoholic beverage sales activity establishment.

(EE) “Transfer of a permit” means the assignment, bequest, conveyance, demise, devise, gift, grant, lease, loan, sublease or transfer of an alcoholic beverage sales activity establishment permit.

Section 100.02. Inspection and Right of Entry

The sale of alcoholic beverages is a closely regulated industry. The officials responsible for enforcement of the City of _____ Municipal Code, or their duly authorized representatives, may enter on any site or into any structure for the purpose of investigation, provided they do so in a reasonable manner, whenever they have cause to suspect a violation of any provision of these regulations, or whenever necessary to the investigation of violations to the operational standards, deemed approved performance standards or conditions of approval prescribed in these regulations. If an owner, occupant or agent refuses permission to enter, inspect or investigate, the officials or their representatives, may seek an inspection warrant under the provisions of California Code of Civil Procedure section 1822.50 et. seq.

Section 100.03. Official Action

All officials, departments, and employees of the City vested with the authority to issue permits, certificates, or licenses shall adhere to, and require conformance with, these regulations.

Section 100.04. Private Right of Action

(A) Any person or entity acting for the interests of itself, its members or the general public (hereinafter “the private enforcer”) may bring a civil action to enforce this Chapter. Upon proof of a violation, a court shall award to the private enforcer the following:

1. Damages in the amount of either:

- (a) upon proof, actual damages; or
- (b) with insufficient or no proof of damages, \$_____ for each violation of this Chapter. Unless otherwise specified in this Chapter, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this Chapter, no private enforcer suing on behalf of the general public shall recover damages based upon a violation of this Chapter if a previous claim brought on behalf of the general public for damages and based upon the same violation has been adjudicated, whether or not the private enforcer was a party to that adjudication.

2. Restitution of the gains obtained in violation of this Chapter.

3. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health.

(B) The private enforcer may also bring a civil action to enforce this Chapter by way of a conditional judgment or an injunction. Upon proof of a violation, a court shall issue a conditional judgment or an injunction.

Section 100.05. Transfer of Revocation of ABC Licenses

If a license is to be transferred to a new owner, the City of _____ is authorized under Business and Professions Code Section 23800(e) to request that the state of California Department of Alcoholic Beverage Control within thirty days after the filing of a transfer application (or a longer period if allowed by law) impose conditions to mitigate problems at or in the immediate vicinity of the premises on any licenses being transferred to new owners.

If a license is to be transferred to new premises, the alcoholic beverage sales activity must apply for a land use permit in accordance with the requirements of Article II of this Chapter.

If a license is revoked by the state of California Department of Alcoholic Beverage Control, after the revocation becomes a final order the alcoholic beverage sales activity must cease operation and may not resume unless it applies for and obtains a land use permit in accordance with this Chapter.

Section 100.06. Severability

If any section, subsection, sentence, clause phrase, or word of this ordinance is for any reason held to be invalid, the validity of the remaining portions of this ordinance shall not be affected.

ARTICLE II. Conditional Use Permits for New Alcoholic Beverage Sales Activities

Section 200.01. Purposes

The general purposes of these regulations are to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare by requiring consideration and approval of a land use permit before a new alcoholic beverage sales activity will be permitted in any land use zoning district of the City and by requiring all new alcoholic beverage sales activities to comply with the operational standards in Section 300.04 of this Article and to achieve the following objectives:

- (A) Protect adjacent neighborhoods from the harmful effects attributable to the sale of alcoholic beverages and to minimize the adverse impacts of nonconforming and incompatible uses.
- (B) Provide opportunities for businesses selling alcoholic beverages to operate in a mutually beneficial relationship with each other and with other commercial and civic services.

(C) Provide mechanisms to address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels.

(D) Ensure that businesses selling alcoholic beverages are not the source of undue public nuisances in the community.

Ensure that businesses selling alcoholic beverages are not the source of undue public nuisances in the community.

(E) Ensure that sites where alcoholic beverages are sold are properly maintained so that negative impacts generated by these activities are not harmful to the surrounding environment in any way.

(F) Reimburse the [jurisdiction] for reasonable costs associated with providing specific services and products to alcohol retail outlets and to issue permits, perform investigations, inspections, and audits and the administrative enforcement and adjudication thereof.

(G) Prohibit the use of any fees collected pursuant to this Article for other purposes.

This Article alone does not allow or permit alcoholic beverage sales activities, but only applies to these activities where otherwise allowed or permitted within an involved applicable land use zoning district. This Article does not authorize alcoholic beverage sales activities in any land use district where they are not otherwise allowed or permitted by the applicable involved zoning district's regulations.

The provisions of this ordinance are intended to compliment the State of California alcohol-related laws. The city does not intend to replace or usurp any powers vested in the California Department of Alcoholic Beverage Control (ABC).

Section 200.02. Zones for Alcoholic Beverage Sales Activity Establishments

Alcoholic beverage sales activity establishments are conditional uses only in the commercial zones where appropriately designated as identified by the Zoning Ordinance and General Plan. No such establishment shall be permitted in any area outside of one of these commercial zones.

Section 200.03. Requirement

Notwithstanding any other provisions of this code, no new on-site or off-site alcoholic beverage sales activity may be established unless a conditional use permit is first obtained in accordance with the requirements of this Article.

Section 200.04. Restrictions

(A) A new alcoholic beverage sales activity is not permitted in any of the following locations:

1. Within 500 feet of an existing alcoholic beverage sales activity.
2. Within 500 feet of any of the following: a public or private accredited school; a public park, playground or recreational area; a nonprofit youth facility, a place of worship; a hospital; an alcohol or other drug abuse recovery or treatment facility; or a county social service office.
3. Within a crime reporting district, or within 500 feet of a crime reporting district, where the general crime rate exceeds the city-wide general crime rate by more than 20 percent.

4. A location where the new alcoholic beverage sales activity would lead to the grouping of more than four (4) alcoholic beverage sales activities within a one thousand (1,000) foot radius from the new alcoholic beverage sales activity.

Section 200.05. Operational Standards and Training Requirements

(A) **Operational Standards.** All new alcoholic beverage sales activities shall be designed, constructed, and operated to conform to all of the following operational standards:

1. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
2. That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area;
3. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
4. That it complies with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual

City business taxes and alcohol sales administrative program fees;

5. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood;

6. That all alcohol beverage sales activities subject to this Article pay the Conditional Use Permit fee pursuant to Section 200.18.

A copy of these operational standards, any applicable ABC or City operating conditions, and any training requirements set forth in Section 200.05(B) shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

(B) Responsible Beverage Sales and Service Training Requirements.

1. All persons who own, or are employed in the operation of, a new alcoholic beverage establishment that is issued a use permit in the manner provided for by Article II of this Chapter, and who are personally engaged in the sale or service of alcoholic beverages or who supervise or otherwise control the sale or service of such beverages shall successfully complete a certified training program in responsible methods and skills for selling and serving alcoholic beverages within 180 days of the issuance of the use permit, or within 180 days of the issuance of a certificate of occupancy authorizing the occupation and operation of the establishment, whichever last occurs.

2. To meet the requirements of this section a certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service (CCC/RBS) or other certifying/licensing body designated by the State of California.

3. The [Chief of Police] shall develop and distribute to permittees educational materials to permittees in support of the Responsible Beverage Service program as determined by the Chief of Police.

Section 200.06. Administration

The [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall administer conditional use permits under this Article.

Section 200.07. Permit Application

(A) Any person, association, partnership, corporation, or other entity desiring to obtain an alcoholic beverage sales activity establishment conditional use permit shall file an application with the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] on a form provided by the Director. The application shall be accompanied by a nonrefundable application processing fee in the amount established by City Council resolution.

(B) **Contents of Application.** The application for a conditional use permit shall contain the following information:

1. The name, address, and telephone number of the applicant. If the applicant is a corporation, the applicant shall set forth the name of the corporation exactly as shown in its articles of incorporation. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible management officer.

2. The name, address, and telephone number of each lender or share holder with a five percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid.

3. The name, address, and telephone number of the person who shall manage and operate the establishment for which the permit is requested.
4. The name, address, and telephone number of all existing schools, parks, playgrounds or recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug abuse recovery or treatment facilities, or county social service offices within 500 feet of the proposed alcoholic beverage sales activity establishment.
5. The name, address, and telephone number of all alcoholic beverage activities within 500 feet of the proposed alcoholic beverage sales activity establishment and within a 1000 foot radius from the proposed alcoholic beverage sales activity establishment.
6. The name, address, and telephone number of a person authorized to accept service of legal notices.
7. The proposed business name of the alcoholic beverage sales activity establishment and description of all operating aspects of the proposed business.
8. The type of ABC license the applicant is seeking for the alcoholic beverage sales activity establishment.
9. Street address of the proposed alcoholic beverage sales activity establishment and the assessor parcel number for the property.
10. A plot plan for the property depicting the location of the building housing the alcoholic beverage sales activity establishment on the property and all existing and proposed parking, exterior lighting, signage, and landscaping, trash enclosures, waiting or queuing areas.
11. Any other information reasonably necessary to accomplish the purposes of Section 200.08.

(C) Referral to Other City Departments and Agencies. The [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] may refer the application to other City departments to determine whether the premises where the alcoholic beverage sales activity establishment will be located, complies with the City's building, health, zoning and fire ordinances or other applicable ordinances or laws. City departments may conduct an inspection of the premises to determine compliance with the ordinances and other laws they administer. City departments may prepare reports summarizing their inspections and recommending whether to approve or deny the application based on their inspections.

(D) Action on Application. Notice and public hearing requirements shall be as set forth in Section _____ of the City of _____ Zoning Ordinance pertaining to conditional use permit.

Section 200.08. Action on Permit Application

The [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall approve issuance of the permit to allow a new alcoholic beverage sales activity upon making the following findings [[in addition to][in lieu of] the findings required by the city's general conditional use permit ordinance]:

1. The proposed alcoholic beverage sales activity establishment is located in a zoning district in which the establishment is a permitted use;
2. A finding of "public convenience and necessity" (Business and Professions Code Section 23958.4(b)(2)), if the activity will be located in an area that has been determined by the state of California Department of Alcoholic Beverage Control to have an undue concentration of licenses as defined in Business and Professions Code Section 23958.4(a);

3. A finding that the alcoholic beverage sales activity will not aggravate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcoholic beverage sales to minors, noise and littering;
4. The proposed establishment will not detrimentally affect nearby neighborhoods considering the distance of the alcohol establishment to residential buildings, schools, parks, playgrounds or recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug abuse recovery or treatment facilities, county social service offices, or other alcoholic beverages sales activity establishments;
5. The proposed establishment will otherwise be compatible with existing and potential uses within the general area; and
6. The proposed establishment is not located in what has been determined to be a high-crime area, or where a disproportionate number of police service calls occur.

The proposed establishment is not located in what has been determined to be a high-crime area...

Section 200.09. Designation of Level of Risk

Upon making the findings required in Section 200.08, The [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall designate whether the permitted Conditional Use is a low-, or medium-risk alcoholic beverage sales activity establishment for creating law enforcement costs. On-sale permittees with full-service bars and which are open after midnight on one or more nights each week shall be designated as medium

risk permittees. Off-sale permittees with at least [1,000] square feet of shelf space reserved for alcohol sales shall be designated a medium-risk premises. All other types of permittees shall be designated low-risk permittees.

SECTION 200.10. Renewals

Each permittee shall submit an application for renewal prior to each calendar year by a date determined by [the relevant city/county official]. The application shall include any information regarding changes in the operations of the premises, the number of employees who will be attending Responsible Beverage Service trainings, and any other information as determined by [the relevant city/county official].

SECTION 200.11. Conditions of Approval

Reasonable conditions of approval may be imposed, including but not limited to the following conditions.

1. **Soundwalls.** If the alcoholic beverage sales activity establishment abuts residential uses and is allowed in the involved zoning district, a soundwall may be required between the activity and the abutting residential uses. The soundwall must be no higher than six feet and must not obstruct the view of the building and parking areas from the street. Vegetation may be required to be planted along the soundwall and be of a type that will cover the soundwall surface within two years.
2. **Graffiti Removal.** The removal of all graffiti from the walls, fences, pavement or buildings within twenty-four hours of discovery of its appearance on the property may be required.
3. **Exterior Lighting.** Exterior lighting containing high pressure sodium or equivalent type, with an illumination intensity of between one and four foot-candles, may be required. The lighting may be required to be lit during all hours of darkness. Any required

lighting must be directed and shielded so as not to glare onto adjoining residential properties and must have a housing to protect against breakage. Any required lighting must illuminate the adjacent public sidewalks and all parking lots under the business establishment's control in a manner that allows law enforcement personnel to identify persons standing in those areas. Any broken or burned out lights may be required to be replaced within seventy-two hours.

4. Trash Receptacles. Permanent, non-flammable trash receptacles, sixty gallons or less in size, may be required to be located at convenient locations, appropriately screened from view, outside the establishment and in the establishment's parking area (if any). The operators of the business may be required to remove on a daily basis, or more frequently if needed to maintain a litter-free environment, all trash from these receptacles and from the sidewalk adjacent to the establishment. The operators of the business also may be required to remove, at least three times per week, all trash originating from its establishment deposited on public property within four hundred feet of any boundary of its premises. All trash receptacles of any size may be required to be appropriately screened from view.

5. Pay Telephones. Pay telephones on the site of the establishment may either be: (a) prohibited; or (b) required to be of the type that only allow outgoing calls and be located in a visible and well-lighted location.

6. Program. A "complaint response-community relations" program established and maintained by the deemed approved activity may be required. The program may include the following:

- (a) Posting at the entry of the establishment and providing to any requesting individual the telephone number for the area commander of the local law enforcement substation;
- (b) Coordinating with the local law enforcement agency to monitor

community complaints about the establishment's activities;

(c) Having a representative of the establishment meet with neighbors or neighborhood association on a regular basis and at their request, attempt to resolve any neighborhood complaints regarding the establishment.

7. Activities. If appropriate, the following activities may be prohibited on the premises: pool or billiard tables, football or pinball games, arcade style video or electronic games, or coin operated amusements devices.

8. Prohibited Products. To discourage nuisance activities, an off-site alcoholic beverage sales activity establishment may be prohibited from selling one or more of the following products:

- (a) Wine or distilled spirits in containers of less than seven hundred fifty milliliters;
- (b) Malt beverage products with alcohol content greater than five and one-half percent by volume;
- (c) Wine with an alcoholic content greater than fourteen percent by volume unless in corked bottles and aged at least two years;
- (d) Single containers of beer or malt liquor;
- (e) Containers of beer or malt liquor not in their original factory packages of six-packs or greater;
- (f) Containers of beer or malt liquor larger than thirty-nine ounces;
- (g) Distilled spirits in bottles or containers smaller than three hundred seventy-five milliliters;
- (h) Cooler products, either wine- or malt-beverage-based, in less than four-pack quantities.

9. Chilled Alcoholic Beverages. An off-site alcoholic beverage sales activity establishment may be prohibited from maintaining

refrigerated or otherwise chilled alcoholic beverages on the premises.

10. Hours of Operation. The hours of operation of an alcoholic beverage sales activity establishment may be restricted to certain hours of each day of the week unless limited further by the state of California Department of Alcoholic Beverage Control.

11. Cups. In off-site alcoholic beverage sales activity establishments, the sale or distribution to the customer of paper or plastic cups in quantities less than their usual and customary packaging may be prohibited.

12. Signs. The following signs may be required to be prominently posted in a readily visible manner in English, Spanish, and the predominant language of the patrons:

- (a) "California State Law prohibits the sale of alcoholic beverages to persons under twenty-one years of age";
- (b) "No Loitering or Public Drinking"; and
- (c) "It is illegal to possess an open container of alcohol in the vicinity of this establishment".

13. Presentation of Documents. A copy of the conditions of approval and the ABC license may be required to be kept on the premises and presented to any law enforcement officer or authorized county official upon request.

14. Mitigating Alcohol-Related Problems. The establishment may be required to operate in a manner appropriate with mitigating alcohol-related problems that negatively impact those individuals living or working in the neighborhood, including but not limited to: sales to minors, the congregation of individuals, violence on or near the premises, drunkenness, public urination, solicitation, drug-dealing, loud noise, and litter.

15. Visibility of Signage. The total surface of signage pertaining to or referencing alcoholic sales or beverages that is visible from the

public right of way may be required to not exceed six hundred thirty square inches.

16. Window Coverage. To ensure the safety of the business owner, patrons and law enforcement officers, no more than 15% of the square footage of windows and 10% of clear doors of off-site premises shall be obstructed by signs or advertising. All signs and advertising shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises. This includes the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. This latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises.

17. Drug Paraphernalia. An off-site alcoholic beverage sales activity establishment may be prohibited from selling drug paraphernalia products as defined in Health and Safety Code Sections 11014.5 and 11364.5. "Drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the California Uniform Controlled Substances Act (commencing with California Health and Safety Code Section 11000).

18. Loitering. The establishment's operators or employees may be required to discourage loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so.

19. **Security Cameras.** At least two twenty-four hour time-lapse security cameras may be required to be installed and properly maintained on the exterior of the building at locations recommended by the sheriff's department. All criminal and suspicious activities recorded on this surveillance equipment must be reported to local law enforcement. To the extent allowed by law, the establishment's operators may be required to provide any tapes or other recording media from the security cameras to the sheriff.

20. **Prohibited Vegetation.** No exterior vegetation may be planted or maintained that could be used as a hiding place for persons on the premises. Exterior vegetation may be planted and maintained in a manner that minimizes its use as a hiding place.

Section 200.12. Appeals from a Determination on an Application for Permit

Any applicant or other person aggrieved by a decision of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] pursuant to this Article may appeal the decision to the [Board of Appeals/Planning Commission/City Council] within the time and in the manner required by section _____ of the City of _____ Zoning Ordinance.

Section 200.13. Grounds for Condition Use Permit Suspension or Revocation

An alcoholic beverage sales activity establishment conditional use permit may be suspended by the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] for up to one year or revoked for failure to comply with operational standards or training requirements in section 200.05 or conditions imposed through the conditional use permit.

Notice of intention to suspend or revoke shall be in writing and shall state the grounds therefore. Notice shall be mailed by U.S. First-Class Mail

and Certified Mail Return Receipt Requested as set forth in section 300.11(H) of Article III. Any suspension or revocation shall be done as specified in section _____ of the City of _____ Zoning Ordinance.

Section 200.14. Appeal from Suspension or Revocation of Conditional Use Permit

Any applicant or other person aggrieved by a decision of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] from a suspension or revocation of a conditional use permit may appeal the decision to the [Board of Appeals/Planning Commission/City Council] within the time and in the manner required by section _____ of the City of _____ Zoning Ordinance.

SECTION 200.15. Regulatory Investigations, Inspections and Audits

(A) The Chief of Police shall develop and implement a regulatory investigations, inspections, and audit plan to insure compliance with the provisions of this Article. Inspections, investigations, and audits shall include but not be limited to:

1. Scheduled and unannounced visits by an alcohol law enforcement officer to the permitted location to inspect the operational practices and to determine compliance with all conditions of approval;
2. Compliance checks conducted by undercover law enforcement officers and those deputized to serve in this capacity to determine whether the permittee and its staff are adhering to State laws prohibiting alcohol service to minors or obviously intoxicated persons.

(B) Inspections and investigations shall occur on the following schedule: for low risk permittees, one time per year; for medium risk permittees, two times per year; high-risk permittees, four times a year. The Chief of

Police shall have the discretion to determine the specific types of inspections and investigations to be conducted.

(C) Upon a finding that a permittee has violated any conditions of approval or operational standards, a citation shall be issued specifying the violation and providing a schedule for corrective action.

(D) Upon a finding that a permittee has violated a State law prohibiting service of alcoholic beverages to minors or obviously intoxicated persons, a notice shall be provided to the permittee with a schedule for corrective action.

(E) An inspection shall be made of any alcoholic beverage sales activity establishment that is the subject of a law enforcement call for service for the purposes of determining whether the establishment is a law enforcement problem establishment. The inspection may be made at the time of the call for service. Upon review of the inspection and the permittee's corrective actions, the Chief of Police will make a determination whether the premises is a law enforcement problem premises.

SECTION 200.16. Change in Designation of Risk

(A) A permittee will maintain its original level of risk designation so long as it does not receive a citation, violate State laws regarding service of alcoholic beverages to minors or obviously intoxicated adults, or is identified as a law enforcement problem premises pursuant to Section 200.15.

(B) A low-risk permittee that receives one citation or violates State law regarding service of alcoholic beverages to minors or obviously intoxicated adults, shall be re-designated as a medium-risk permittee for the calendar year following the date of the citation; a low-risk permittee that receives two citations or is found to have violated State laws regarding sales to minors or obviously intoxicated persons on two different occasions (or receives

one such citation and violates such State laws one time) within a two year period shall be designated as a high-risk permittee for the calendar year following the date of citation.

(C) A medium-risk permittee that receives one citation or is found to have violated State laws regarding sales to minors or obviously intoxicated adults shall be re-designated as a high-risk permittee for the calendar year following the date of such citation or finding.

(D) Any permittee determined to be a law enforcement problem premises shall be designated a high-risk permittee for the calendar year following the date of designation.

(E) Any permittee that has had its level of risk designation raised pursuant to this section shall return to its original level of risk designation upon completing one calendar year with no citations for violating any conditions of approval or operational standards and no findings that State laws related to sales to minors or obviously intoxicated person have been violated.

SECTION 200.17. Citations

(A) A citation issued pursuant to Section 200.14 for violating any condition of approval or operational standards shall result in a fine of [\$500].

(B) [All fines shall be placed in a special fund to be used to cover the costs of alcohol-related law enforcement activities.]

(C) Any permittee may appeal the imposition of a fine to the [Board of Zoning Adjustment/ Zoning Administrator/Planning Commission].

SECTION 200.18. Conditional Use Permit Fee

(A) Each permittee shall pay an annual Conditional Use Permit Fee to reimburse the

[jurisdiction] for the reasonable regulatory costs for issuing licenses and permits, performing investigations, inspections, and audits, and the administrative enforcement and adjudication thereof and the cost of services and programs provided to permittees.

(B) The regulatory portion of the Conditional Use Permit Fee will be calculated each year based on the estimated costs of conducting inspections, investigations, and audits pursuant to Section 200.15, the cost of issuing permits pursuant to Section 200.08, and the cost of administration of this Article, including the cost of recordkeeping.

1. The [relevant city/county official] shall estimate the cost of issuing permits and of administering this Article for each upcoming calendar year.
2. The Chief of Police shall estimate the average costs for each type of inspection, investigation, and audit to be performed in each upcoming calendar year and submit the estimates to [the relevant city/county official].
3. The Conditional Use Permit Fee will be paid by each permittee based on: (a) its pro rata share of the cost of issuing and renewing permits and administering this Article; and (b) the anticipated cost of conducting the number of anticipated inspections, investigations, and audits to be performed at its premises pursuant to Section 200.15.
4. The [relevant city/county official] and the Chief of Police will establish recordkeeping systems for tracking all costs listed above as they apply to each permittee. If actual costs exceed estimated costs, the costs shall be added to the Conditional Use Permit Fee the subsequent calendar year. If actual costs are less than estimated costs, a credit will be issued for the amount of overcharge to permittees subject to overcharges the subsequent calendar year.

(C) The services and programs portion of the Conditional Use Permit Fee will be calculated based on the cost per employee of providing written educational materials developed and distributed pursuant to Section 200.05(B).

ARTICLE III. Standards and Procedures for Existing Alcoholic Beverage Sales Activities

Section 300.01. Purposes

The purposes of these regulations are to protect and promote the public health, safety, comfort, convenience, prosperity and general welfare by requiring that alcoholic beverage sales activities that are legal nonconforming activities to comply with the deemed approved performance standards in this Chapter and to achieve the following objectives:

The purposes of these regulations are to protect and promote the public health, safety, comfort, convenience, prosperity and general welfare...

(A) Protect surrounding neighborhoods from the harmful effects attributable to the sale of alcoholic beverages and to minimize the adverse impacts of nonconforming and incompatible uses.

(B) Encourage businesses selling alcoholic beverages to operate in a manner that is mutually beneficial to other such businesses and other commercial and civic activities.

(C) Provide a mechanism to address problems associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and increased noise.

(D) Ensure that businesses selling alcoholic beverages are not the source of public nuisances in the community.

(E) Ensure that sites where alcoholic beverages are sold are properly maintained so that negative impacts generated by these activities are not harmful to the surrounding environment in any way.

(F) Monitor deemed approved uses to ensure that they do not substantially change their mode or character of operation.

(G) Reimburse the [jurisdiction] for reasonable costs associated with providing specific services and products to alcohol retail outlets and to issue permits, perform investigations, inspections, and audits and the administrative enforcement and adjudication thereof.

(H) Prohibit the use of any fees collected pursuant to this Article for other purposes.

The provisions of this ordinance are intended to compliment the alcohol-related laws of the State of California. The city does not intend to replace or usurp any powers vested in the California Department of Alcoholic Beverage Control (ABC).

Section 300.02. Applicability

(A) The deemed approved alcoholic beverage sales regulations shall apply to all alcoholic beverage sales activities for on-site or off-site consumption existing and operating within the City of _____ on the effective date of this Chapter. The nonconforming use provisions of the city's zoning regulations apply to this Article, except as otherwise provided in this Chapter.

(B) In their interpretation and application, the provisions of this title shall be the minimum requirements for the promotion of the public health, safety, morals, convenience and general welfare and shall be construed broadly to promote the purposes for which

they are adopted.

1. Public provisions. This Chapter is not intended to interfere with, abrogate, or annul any other Chapter, rule or regulation, statute or other provision of law except as specifically provided herein. Where any provision of this Chapter imposes restrictions different from those imposed by any other Chapter, rule or regulation of the City, or other provision of law, the provision that is more restrictive or imposes higher standards shall control.

2. Private provisions. Private easements, covenants, conditions and restrictions of record are not enforced by the City except as may be specifically provided by agreement with the City of _____.

Section 300.03. Automatic Deemed Approved Status

(A) All alcoholic beverage sales activities that are legal nonconforming activities as of the effective date of this Chapter shall automatically become deemed approved activities as of the effective date of this Chapter and shall no longer be considered legal nonconforming activities.

(B) Each deemed approved activity shall retain its deemed approved status as long as it complies with the performance standards of this Chapter.

(C) The occurrence of any of the following shall terminate the deemed approved status of the business activity and shall require a new conditional use permit in the manner provided by Article II of this Chapter to continue operation:

1. An existing alcoholic beverage sales activity changes its activity so that the ABC requires a different type of license;
2. There is a substantial modification to the mode or character of operation.

3. As used herein, the phrase “substantial change of mode or character of operation” includes but is not be limited to the following:

- (a) The off-site alcoholic beverage sales activity establishment increases the floor or land area or shelf space devoted to the display or sales of any alcoholic beverage;
- (b) The on-site alcoholic beverage sales activity establishment increases the floor or land area or shelf space devoted to the display, sales, or service of any alcoholic beverage;
- (c) The off-site or on-site alcoholic beverage sales activity establishment expands a customer service area primarily devoted to the sale or service of any alcoholic beverages and/or increases the number of customer seats primarily devoted to the sale or service of any alcoholic beverages;
- (d) The off-site or on-site alcoholic beverage sales activity establishment extends the hours of operation;
- (e) The alcoholic beverage sales activity establishment proposes to reinstate alcohol sales after the ABC license has been either revoked or suspended for a period greater than 30 days by the ABC; or
- (f) The alcoholic beverage sales activity voluntarily discontinues active operation for more than 90 consecutive days or ceases to be licensed by the ABC.

4. A substantial change in the mode of character of operation shall not include:

- (a) **Re-establishment, restoration, or repair** of an existing alcoholic beverage activity on the same premises after the premises have been rendered totally or partially inaccessible by a riot, insurrection, toxic accident, or act of God, provided

that the re-establishment, restoration, or repair does not increase the sales or service of any alcoholic beverage, extend the hours of operation of any establishment, or add to the capacity, floor or land area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.

- (b) **Temporary closure** for not more than 90 days in cases of vacation or illness or for purposes of repair, renovation, or remodeling if that repair, renovation, or remodeling does not change the nature of the premises and does not increase the sales or service of any alcoholic beverage, extend the hours of operation of any establishment, or add to the capacity, floor or land area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.

(D) **Discontinuance.** Once it is determined by the city that there has been a discontinuance of active operation for 90 consecutive days or a cessation of ABC licensing, it may be resumed only upon the granting of a conditional use permit as provided in Article II. The property owner shall be notified by the City of _____ of the termination of the deemed approved status and shall be informed of the property owner’s right to appeal the City’s decision to the Administrative Hearing Officer as provided in Section 300.11(A). Notification of the public hearing shall be in accordance with Section 300.11(H).

Section 300.04. Deemed Approved Performance Standards

- (A) The provisions of this section shall be known as the deemed approved performance standards. The purpose of these standards is to control dangerous or objectionable

environmental effects of alcoholic beverage sales activities. These standards shall apply to all deemed approved alcoholic beverage sales activities that hold deemed approved status pursuant to section 300.03.

(B) An alcoholic beverage sales activity shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

1. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
2. That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area;
3. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
4. That it complies with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual City business taxes and alcohol sales administrative program fees;
5. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding

neighborhood;

That all alcohol beverage sales activities subject to the provisions of this Article pay the Deemed Approved Status Fee pursuant to Section 300.10.

A copy of these performance standards, any applicable ABC or City operating conditions, and any training requirements set forth in Section 300.05(B) shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

Section 300.05. Training Requirements

(A) All persons who own, or are employed in the operation of, deemed approved activities under Article III of this Chapter, and who are personally engaged in the sale or service of alcoholic beverages or who supervise or otherwise control the sale or service of such beverages shall be required to undergo a certified training program in responsible methods and skills for selling and serving alcoholic beverages.

(B) To meet the requirements of this section a certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body designated by the State of California.

(C) The [Chief of Police] shall develop and distribute to permittees educational materials in support of the Responsible Beverage Service program.

Section 300.06. Notification to Owners of Deemed Approved Activities and Owners of Property

The city or its designated enforcement authority shall notify the owner of each deemed approved

activity, and also, if not the same, any property owner at the address shown on the City's property tax assessment records, of the activity's deemed approved status. The notice shall be sent by U.S. First Class Mail and Certified Mail Return Receipt Requested and shall include a copy of the performance standards in Section 300.04 of this Chapter with the requirement that they be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review. This notice shall also provide that the activity is required to comply with all performance standards; that a deemed approved status fee is required, the amount of such fee shall be calculated based on reasonable costs associated with programs provided by the [local jurisdiction] to the deemed approved activity and the conduct of investigations, inspections, and administration; and that the activity is required to comply with all other aspects of the deemed approved regulations. Should the notice be returned, then the notice shall be sent via regular U.S. Mail. Failure of any person to receive notice given pursuant to this section shall not affect the deemed approved status of the activity.

Section 300.07. Designation of Level of Risk; Notification

(A) Within six months of enactment of this Chapter, the Chief of Police shall notify each owner of a deemed approved activity in writing of its level of risk designation.

(B) Medium-risk establishments shall include:

1. On-sale establishment with deemed approved activity that have full-service bars and which are open after midnight on one or more nights each week;
2. Off-sale establishment with deemed approved status with at least [1,000] square feet of shelf space reserved for alcohol sales; and
3. Deemed approved activities other than full-service restaurants that are within [500 feet] of two or more other alcoholic

beverage sales activity establishments that are not full-service restaurants.

(C) All other types of deemed approved activities shall be designated low-risk establishments.

(D) Owners of deemed approved activity may appeal its level of risk designation to the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] within 30 days of receipt of notice.

Section 300.08. Regulatory Investigations, Inspections and Audits

(A) The Chief of Police shall develop and implement a regulatory investigations, inspections, and audit plan to insure compliance with the provisions of this Article. Inspections, investigations, and audits shall include but not be limited to:

1. Scheduled and unannounced visits by an alcohol law enforcement officer to inspect the operational practices and determine compliance with deemed approved performance standards provided in Section 300.04;
2. Compliance checks conducted by undercover law enforcement officers and those deputized to serve in this capacity to determine whether the permittee and its staff are adhering to State laws prohibiting alcohol service to minors or obviously intoxicated persons.

(B) The Chief of Police shall assign an alcohol law enforcement officer to be primarily responsible for regulatory investigations and inspections.

(C) Inspections and investigations shall occur on the following schedule: for low risk establishments with deemed approved activity, one time per year; for medium risk establishments with deemed approved activity, two times per year; high-risk establishments with deemed approved activity, four times

a year. The Chief of Police shall have the discretion to determine the specific types of inspections and investigations to be conducted. Implementation of the inspections and investigations plan will begin January 1, 20[-].

(D) An inspection shall be made of any establishment with alcoholic beverage sales activity that is the subject of a law enforcement call for service for the purposes of determining whether the establishment is a law enforcement problem establishment. The inspection may be made at the time of the call for service. Upon review of the inspection and the owner's corrective actions, the Chief of Police will make a determination whether the establishment is a law enforcement problem establishment.

Section 300.09. Change in Designation of Level of Risk

(A) An owner of a deemed approved activity will maintain its original level of risk designation so long as it does not receive a citation, violate State laws regarding service of alcoholic beverages to minors or obviously intoxicated adults, or is identified as a law enforcement problem premises pursuant to Section 300.08.

(B) A low-risk owner of a deemed approved activity that receives one citation or violates State law regarding service of alcoholic beverages to minors or obviously intoxicated adults, shall be re-designated as a medium-risk establishment for the calendar year following the date of the citation; a low-risk owner of a deemed approved activity that receives two citations or is found to have violated State laws regarding sales to minors or obviously intoxicated persons on two different occasions (or receives one such citation and violates such State laws one time) within a two year period shall be designated as a high-risk establishment for the calendar year following the date of citations and/or notices.

(C) A medium-risk owner of a deemed approved activity that receives one citation or is found to have violated State laws regarding sales to minors or obviously intoxicated adults shall be re-designated as a high-risk establishment for the calendar year following the date of such citation or finding.

(D) Any owner of a deemed approved activity determined to be a law enforcement problem premises shall be designated a high-risk permittee for the calendar year following the date of designation.

(E) Any owner of a deemed approved activity that has had its level of risk designation raised pursuant to this section shall return to its original level of risk designation upon completing one calendar year with no citations and no findings that State laws related to sales to minors or obviously intoxicated person have been violated.

Section 300.10. Stakeholders Meeting

The Chief of Police shall convene an [annual or biannual] stakeholder meeting, which shall include representatives from City departments, neighborhood associations, the owners or operators of the deemed approved activities, business associations, schools, the Youth Commission [and other interested parties] to report on the activities taken pursuant to this Article and to receive input regarding improvements and possible modification.

Section 300.11. Deemed Approved Status Procedure

(A) **Administrative Hearing Officer.** The City shall appoint one or more neutral Alcoholic Beverage Sales Administrative Hearing Officers ("Hearing Officer"). The neutral Hearing Officer shall conduct administrative hearings, make findings and determine whether violations of this Article, including the deemed approved performance standards,

conditions of approval, objectionable impacts, undue negative impacts or public nuisance activity, have occurred, are occurring, or are likely to occur in the future. A neutral Hearing Officer shall be an impartial individual, without a vested interest in either the deemed approved activity or a complainant against the deemed approved activity, and may not be a current City employee or City official, whether elected or appointed. Notwithstanding the foregoing, a contracted Hearing Officer shall not be considered a City employee for the purposes of this Article. The retention and compensation of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of penalties or costs awarded by the officer. The assigned Hearing Officer shall exercise all powers relating to the conduct of the administrative hearing unless or until the decision of the Hearing Officer is appealed to the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission].

(B) Inspection, Notice of Violations, and Re-Inspection and Citation Process.

If violations are observed during an inspection, investigation or audit pursuant to section 300.08, the law enforcement officer will issue a citation that lists the violations and require the payment of a \$500 fine and will send a Notice To Abate via both U.S. First Class mail and Certified Mail Return Receipt Requested to the owner of the deemed approved activity and the property owner, if not the same person or entity. Such Notice to Abate shall notify the owner and property owner of the violations recorded by the officer and that continued non-compliance may result in penalties set forth in this section and shall set forth a reasonable period of not less than 30 calendar days within which to abate any violations.

Upon the city's receipt of a complaint from the public, police department, city official, or any other interested person that a deemed approved use is in violation of the performance standards set forth in section 300.04 of this Article, the following procedure shall be followed:

The Police Chief or designee will assess the nature of the complaint and its validity by conducting an on-site observation and inspection of the premises to assess the activity's compliance with performance standards. An enforcement officer will provide the business owner and any manager on the premises during the on-site inspection with a copy of any complaint made in writing or with information about the details of any oral complaint.

If violations are observed during the observation and inspection, the officer will record the violations and send via both U.S. First Class mail and Certified Mail Return Receipt Requested a Notice to Abate to the owner of the deemed approved activity and the property owner, if not the same person or entity. Such Notice to Abate shall notify the owner and property owner of the violations recorded by the officer and that continued non-compliance may result in the penalties set forth in this Section, and shall set forth of a reasonable period of not less than 30 calendar days within which to abate any violations.

At the end of the abatement period prescribed in the Notice to Abate, the officer will conduct a re-inspection visit. If the violations have not been abated within the prescribed abatement period and the officer determines that it is reasonably unlikely that further law enforcement efforts to compel compliance with performance standards by the owner of the deemed approved activity is likely, the officer shall determine that the deemed approved activity is in persistent violation of the performance standards and shall refer the matter and all material evidence to the Hearing Officer for adjudication pursuant to this Section. A copy of the officer's determination of continued non-compliance shall be sent via both U.S. First Class Mail and Certified Mail Return Receipt Requested to the owner of the deemed approved activity and the property owner, if not the same person or entity.

(C) Procedure for Consideration of Violations of Performance Standards.

Upon referral from the officer that a deemed approved activity is in persistent violation of the performance standards of section 300.04 of this Article, the operating status of the deemed approved activity in question shall be reviewed by the Hearing Officer at a public hearing. Notification of the public hearing shall be in accordance with Section 300.11(H) below.

The purpose of the administrative hearing is to receive information as to whether the deemed approved activity is in compliance with the performance standards.

The Hearing Officer shall determine whether the deemed approved activity is in compliance with the performance standards. Based on this determination, the Hearing Officer may continue the deemed approved status for the use in question, may impose administrative penalties for violations of the performance standards, may impose such reasonable conditions as are in the judgment of the Hearing Officer necessary to ensure compliance with the performance standards, and may revoke the deemed approved activity's deemed approved status. If the Hearing Officer determines instead to impose further, new conditions on the deemed approved activity, such conditions shall be based upon the information then before the Hearing Officer.

In reaching a determination as to whether a use has violated the performance standards, or as to the appropriateness of imposing conditions on a use, revoking a use, assessing administrative penalties, or the amount of administrative penalties to assess, the Hearing Officer may consider:

- (1) The length of time the deemed approved activity has been out of compliance with the performance standards; and

- (2) The impact of the violation of the performance standard(s) on the community; and

- (3) Any information regarding the owner of the deemed approved activity's efforts to remedy the violation of the performance standard(s).

"Efforts to Remedy" shall include, but are not limited to:

- (1) Timely calls to the Police Department that are placed by the owner of the deemed approved activity, his or her employees, or agents.

- (2) Requesting that those persons engaging in activities causing violations of the performance standard(s) cease those activities, unless the owner of the deemed approved activity, or his or her employees or agents feels that their personal safety would be threatened in making that request.

- (3) Making improvements to the deemed approved activity's property or operations, including but not limited to the installation of lighting sufficient to illuminate the area within the use's property line, the installation of security cameras, clear unobstructed windows, clean sidewalks, and graffiti abated within three days.

If in the judgment of the Hearing Officer, the operations of the owner of the deemed approved activity constitute a nuisance, the owner is unable to abate the nuisance, and the nuisance is shown to be a significant threat to the public health and safety of the surrounding neighborhood, the Hearing Officer may revoke the activity's deemed approved status. Any continued operation of the business shall require a conditional use permit approved by the [Administrator/Commission/Board].

The decision of the Hearing Officer shall be based upon all information received at the administrative hearing, including, but not

limited to, information compiled by City staff, testimony from the owner of the deemed approved activity, and the testimony of all other interested persons. Any conditions imposed by the Hearing Officer shall be a condition of the deemed approved activity's continued operation. [Any condition imposed by the Hearing Officer shall not be considered a suspension, revocation, or withdrawal of a deemed approved activity's use permit.]

All determinations, decisions, and conditions made or imposed under this Article regarding the use of a deemed approved activity shall run with the land.

(D) **Specific Conditions.** Reasonable conditions may be imposed to ensure compliance with the performance standards including but not limited to the conditions listed in section 200.08, Article II.

(E) **Administrative Penalties.** The Hearing Officer may assess administrative penalties against the owner of the deemed approved activity of no less than \$500.00 and no more than \$1,000.00 for each violation of a performance standard. If the violation is of a continuing nature, the Hearing Officer may impose a penalty for each day the violation remains.

Any violation of any provision of these regulations shall be and is declared to be contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

In addition to the punishment provided by law, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City or any of its contractors in correction, abatement, and prosecution of the violation. Reinspection fees to ascertain compliance with previously noticed or cited violations shall be charged against the owner of the deemed approved activity. The inspection official shall give the owner or other responsible party of such affected premises a written notice showing the itemized cost of such chargeable service and

requesting payment thereof. Should the bill not be paid in the required time, the charges shall be placed as a lien against the property.

If payment of any administrative penalty imposed by the Hearing Officer is not received by the City Administrator within the period of time set forth in the decision, and the decision has not been appealed under the time periods set forth in subsection G, the City Administrator shall request that the Tax Collector pursue collection of the penalty and fee against the owner of the deemed approved activity, up to and including imposition of a special assessment lien in accordance with the requirements of the City's municipal code. In the event that the unpaid administrative penalty is owed by an owner of a deemed approved activity who is not also the property owner of the building in which the use is located, the City Administrator may request that the City Attorney pursue collection of the penalties.

[All fines shall be placed in a special fund to be used to cover the costs of alcohol-related law enforcement activities.]

(F) **Method and Form of Decision of the Hearing Officer.** The Hearing Officer shall, within a reasonable time not to exceed thirty 30 days from the date the hearing is closed, submit to the City Administrator a written decision containing a brief summary of the information considered and the Hearing Officer's findings and conclusions, including any conditions that are to be placed on the deemed approved activity and any administrative penalties to be imposed. The Hearing Officer's written decision shall also inform the parties of their right to appeal the written decision and describe the appeal process. The Hearing Officer's written decision shall be a public record. The City Administrator shall serve a copy of the decision on each party by either personal service or by U.S. First Class mail and Certified Mail Return Receipt Requested. Service of the decision shall be deemed complete at the time it is personally served or

deposited in the mail with the correct amount of postage affixed. Failure to receive a copy of the decision served pursuant to this section shall not affect the validity of the decision. The City Administrator shall also provide a copy of the written decision to the Director of the Planning Department, the Chief of the Police Department, the Director of the Department of Public Health, the Director of the Department of Building Inspection, and the City Council.

The decision of the Hearing Officer shall become final ten days after the service of the decision is deemed complete unless appealed to the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] or, in the case of a decision to revoke the deemed approved status of the alcoholic beverage sales activity, to the City Council, in accordance with subsection J.

In the event there is a negotiated settlement for conditions of approval between the City, the owner of the deemed approved activity and the property owner if not the same person or entity as the owner of the deemed approved activity, the settlement shall constitute the decision of the Hearing Officer for the purpose of a first hearing in the matter. Any subsequent violations of the conditions of approval, performance standards or any other part of this Article may result in a public hearing to revoke the deemed approved status.

(G) Procedure for Consideration of Violations of Conditions of Approval.

In the event of a violation of any of these regulations, or upon evidence that there has been a failure to comply with any prescribed conditions of approval, the Hearing Officer may hold a public hearing. Notification of the public hearing shall be in accordance with subsection H below.

In the event of a failure to comply with any prescribed condition imposed by the Hearing Officer or with any performance standard, at the request of the City Attorney, another administrative hearing may be

set. Notification of this hearing shall be in accordance with subsection H.

The purpose of this administrative hearing is to receive information and determine whether violations to any condition attached to the deemed approved activity have occurred. The hearing shall be conducted as provided in Section C. The Hearing Officer may add to or amend the existing conditions based upon the information presented; may impose additional administrative penalties, or may revoke the deemed approved activity's deemed approved status and/or impose administrative penalties. Any continued operation of a deemed approved activity shall require a conditional use permit approved by the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission]. The provisions of Subsection F concerning the Hearing Officer's written decision shall be followed. The decisions of the Hearing Officer shall become final ten calendar days after the date of decision unless appealed to the [Commission/ Board].

(H) Notification of Public Hearings. The City Administrator shall notify the owner of the deemed approved activity and the property owner, if not the same person or entity as the owner of the deemed approved activity, of the time and place of the public hearing. Such notice shall be sent via U.S. First Class mail and Certified Mail Return Receipt Requested, and shall include notification that the activity's compliance with performance standards will be considered before the Hearing Officer. Notice by mail is deemed given on the date the notice is placed into the U.S. Mail system.

The hearing shall be noticed to the general public by posting notices within 300 feet of the subject property; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the City of ___ and all residents residing within 300 feet of the subject property. All such notices shall be given or posted not less than twenty-one (21) days prior to the date set for the hearing. Fees

for notification shall be in accordance with Section _____ of the City of _____ Zoning Ordinance and paid for by the activity in question.

A 20 inches by 30 inches notice, provided by the City, shall also be posted on the premises of the subject activity, placed in the window of the activity (if a window facing the street is not present, then posted on the exterior of the building).

All notices shall advertise the time, date, purpose and location of the public hearing.

(I) Appeal to [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] de Novo. Within ten calendar days after the determination of the Hearing Officer an appeal may be taken to the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] by the owner of the deemed approved activity or any other interested party. In the event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. The appeal shall be made on a form prescribed by the City. The appeal shall state specifically why it is claimed there was an error or abuse of discretion by the Hearing Officer or why the decision is not supported by the evidence in the record. The appeal shall be accompanied by sufficient information as may be required to facilitate review. Upon receipt of the appeal and the required appeal fee, the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall set the date for its consideration, and shall, not less than twenty-one (21) days before the hearing, give written notice to: the owner of the deemed approved activity; the property owner, if not the same person or entity as the owner of the deemed approved activity, the appellant; the adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as appropriate, of the

time, date and place of the hearing on the appeal.

In considering the appeal, the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall determine, de novo, whether the alcoholic beverage sales activity conforms to the applicable performance standards and/or conditions of approval, and may continue or revoke the deemed approved status; or require such changes in the existing use or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity with the performance standards.

The [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall decide the appeal within thirty (30) days after its first hearing of the appeal. If the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the [[Board of Zoning Adjustment/Zoning Administrator/Planning Commission] thereafter until decided. If the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] does not decide the appeal within the prescribed time period, the decision of the Hearing Officer shall be final.

The decision of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] on the appeal to the conditions of approval imposed by the Hearing Officer shall be final.

(J) Appeal on the Revocation of a Deemed Approved Status to [Board of Appeals/City Council] de Novo. Within ten calendar days after the date of a decision by the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] to revoke the deemed approved status, an appeal may be taken to the [Board of Appeals/City Council] by any interested party. In the event that the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the

last date of appeal. The appeal shall be made on a form prescribed by the City and shall be filed with the City Clerk. The appeal shall state specifically why it is claimed there was an error or abuse of discretion by the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] or why its decision is not supported by the evidence in the record. Upon receipt of the appeal and the required appeal fee, the Council shall set the date for its consideration. The City Clerk shall notify the Secretary of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] of the receipt of the appeal and of the date set for its consideration. The Secretary of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall, not less than twenty-one (21) days before the hearing, give written notice to: the owner of the deemed approved activity; the property owner, if not the same person or entity as the owner of the deemed approved activity, the appellant; the adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as appropriate, of the time, date and place of the hearing on the appeal.

In considering the appeal, the [Board of Appeals/City Council] shall determine whether the deemed approved activity conforms to the performance standards, and may approve or disapprove the revocation of the deemed approved status, or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to the performance standards.

The decision of the [Board of Appeals/City Council] shall be made by resolution and shall be final. The [Board of Appeals/City Council] shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the [Board of Appeals/City Council] is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of

the [Board of Appeals/City Council] thereafter until decided.

Section 300.10. Deemed Approved Status Fee

(A) Each owner of a deemed approved activity shall pay an annual Deemed Approved Status Fee to reimburse the [jurisdiction] for the reasonable regulatory costs for issuing licenses and permits, performing investigations, inspections, and audits, and the administrative enforcement and adjudication thereof and the cost of services and programs provided to permittees.

(B) The regulatory portion of the Deemed Approved Status Fee will be calculated each year beginning the first calendar year following enactment of the Chapter based on the estimated costs of conducting inspections, investigations, and audits pursuant to Section 300.08, and the cost of administration of this Article, including the cost of recordkeeping.

(1) The [relevant city/county official] shall estimate the cost of issuing deemed approved status notices and of administering this Article for each upcoming calendar year.

(2) The Chief of Police shall estimate the average costs for each type of inspection, investigation, and audit to be performed in each upcoming calendar year and submit the estimates to [the relevant city/county official].

(3) The Deemed Approved Status Fee will be paid by owner of a deemed approved activity based on: (a) its pro rata share of the cost of administering this Article; and (b) the anticipated cost of conducting the number of anticipated inspections, investigations, and audits to be performed at its premises pursuant to Section 300.08.

(4) The [relevant city/county official] and the Chief of Police will establish recordkeeping systems for tracking

all costs listed above as they apply to each permittee. If actual costs exceed estimated costs, the costs shall be added to the Conditional Use Permit Fee the subsequent calendar year. If actual costs are less than estimated costs, a credit will be issued for the amount of overcharge to permittees subject to overcharges the subsequent calendar year.

(C) The services and programs portion of the Deemed Approved Status Fee will be calculated based on the cost per permittee of providing written educational materials developed and distributed pursuant to Section 300.05(B).

(D) Costs associated with the administration of the stakeholders meeting pursuant to Section 300.08 will not be included in the calculation of the Deemed Approved Status Fee.

(E) The cost of administrative hearings held pursuant to Section 300.09 will be charged to the owner of the deemed approved activity as specified in that Section and shall not be included in the calculation of the Deemed Approved Status Fee.

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END NOTES

- i For a review of the research regarding alcohol retail outlets and community problems see: Stewart, K., *How Alcohol Outlets Affect Neighborhood Violence*. Berkeley, CA: Prevention Research Center, Pacific Institute for Research and Evaluation (no date). Accessed online at: <http://resources.prev.org/documents/AlcoholViolenceGruenewald.pdf> (cited October 3, 2007).
- ii For further discussion, see Wittman, F.D. *Manual for Community Planning to Prevent Problems of Alcohol Availability*. Berkeley, CA: Institute for the Study of Social Change, April 1988; Sparks, M. *Tools for Regulating Local Alcohol Availability, Literature Review*. Community Prevention Institute Prevention Training Workshop Series. Produced for the California Department of Alcohol and Drug Programs (2002). Request at cpininfo@cars-rp.org
- iii For further discussion of the state preemption doctrine, see: Gorovitz, E., Mosher, J., & Pertschuk, M. Preemption or prevention?: Lessons from efforts to control firearms, alcohol and tobacco *J. Pub. Health Policy* 19(1):37-50 (1998); Mosher, J. *The Perils of Preemption*. Briefing paper. Chicago, IL: American Medical Association, 2001.
- iv Local governments have the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through their police power. The “police power” provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws. (See Cal. Const. art. XI, § 7; *Sullivan v. City of Los Angeles* (1953) 116 Cal. App. 2d 807, 810, 254 P.2d 590 (1953) (building regulations); *Schroeder v. Municipal Court* (1977) 73 Cal. App. 3d 841, 848, 141 Cal. Rptr. 85 (zoning regulations).
- v See *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 397, 28 Cal.Rptr.2d 530 (“grandfathered” businesses are nonconforming uses that are not required to seek permits under local zoning ordinances enacted after they were in business.”)
- vi California Business and Professions Code section 23790 provides: “No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city unless the premises had been used in the exercise of such rights and privileges at a time prior to the effective date of the zoning ordinance.” California Government Code section 65901 authorizes cities to issue conditional use permits when authorized to do so by local ordinance.
- vii Government Code section 65030 recognizes the importance of public participation in public hearings and expresses a clear legislative intent that local agencies insure public participation at every level of the conditional use permit process.
- viii The California Supreme Court permits the abatement of even a grandfathered business if it constitutes a nuisance. In one case, the California Supreme Court reasoned that zoning laws do not customarily interfere with existing conditions, but regulate future use of land. If a business constitutes a nuisance, however, it can still be abated in a proper exercise of the police power. (*Jones v. City of Los Angeles* (1930) 211 Cal. 304, 311, 295 P. 14.) In another case, the court reaffirmed the rule that the right to continue a previously existing lawful business may be revoked if the business is found to be a nuisance, on the ground that the abatement of such an existing business would be a lawful exercise of the police power. (*Livingston Rock etc. Co. v. County of L.A.* (1954) 43 Cal.2d 121, 128, 272 P.2d 4.)
- ix Cities are constitutionally authorized to make and enforce within their limits all local, police and sanitary ordinances and other such regulations not in conflict with the general laws. (Cal. Const., Art. XI, § 7.) California Government Code section 38771 provides, “By ordinance the city legislative body may declare what constitutes a nuisance.” The California Supreme Court has observed: “[E]ven without this section cities would have the power to abate public nuisances (Code Civ.Proc., § 731) ... it seems evident that Government Code section 38771 does more than permit cities to adopt as municipal ordinances provisions which have already been enacted as state statutes; such an interpretation would make the section superfluous.” (*City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 100, 48 Cal.Rptr. 889, 410 P.2d 393.)
The state preemption doctrine does not prevent the application of local nuisance abatement regulations to a business licensed to sell alcohol prior to the enactment of the ordinance. (*Suzuki v. City of Los Angeles* (1996) 44 Cal.App.4th 263, 51 Cal.Rptr.2d 880 (nuisance abatement ordinance at issue applied to any business, whether or not it sold alcoholic beverages, as long as the business operated and maintained constituted a nuisance).)
- x Business and Professions Code Section 23958 *et seq.*
- xi See, e.g., U.S. Dep’t of Health & Human Servs. Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention (SAMHSA/CSAP). Grover, P.L., ed. *Prevention Enhancement Protocols System (PEPS): Preventing Problems Related to Alcohol Availability: Environmental Approaches, Practitioner’s Guide*. Washington, D.C.: U.S. Dep’t of Health & Human Servs., Publication No. (SMA) 99-3298. Accessed online at <http://www.ncbi.nlm.nih.gov/books/bv.fcgi?highlight=related,problems,preventing,environmental,availability,alcohol&id=hstat5.on-site.15922> (cited 31 May 2007).



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