

Conditional Use Permit - Deemed Approved Alcoholic Beverage Sales Regulations Ordinance

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, drunk driving arrests often take place at night, as bars are closing and highways become crowded with patrons who have been drinking; and

WHEREAS, studies indicate the rate of alcohol-related crashes can be reduced by responsible beverage service training programs, but the level of risk still is high when outlet density exceeds the acceptable levels of saturation; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the citizens of the City of San Bernardino have complained to the San Bernardino Police Department about said nuisance and criminal activities; and

WHEREAS, there are many establishments in the City of San Bernardino selling alcoholic beverages that do not conform with the Development Code and, as a result, these establishments generate a disproportionate amount of public nuisance service calls for service for the San Bernardino Police Department; and

WHEREAS, California law does not preempt local land use decisions with regard to alcoholic beverage sale regulations and the authority to regulate nuisance conditions created by state-licensed alcoholic beverage retailers derives solely from the City's general police powers.

WHEREAS, the City of San Bernardino recognizes its responsibility to enforce the law and the need for a partnership with alcoholic beverage sale establishments and the community to address illegal activities in proximity to an alcoholic beverage sales establishment.



WHEREAS, the City wishes to require each owner or licensee of an alcoholic beverage sale establishment to secure a use permit to lawfully engage in the sale of alcoholic beverages within the City; and

WHEREAS, the use permit will require the business owner to comply with operational standards and training requirements as conditions of the permit; and

WHEREAS, an annual permit fee will be imposed on all alcoholic beverage sale establishments in order to provide the revenue necessary to fund the costs incurred by the City to monitor compliance and enforce the conditions of the permit and implement programs that promote responsible policies and practices of businesses engaged in the sale of alcoholic beverages; and

WHEREAS, the use permit will establish standards of operation for licensed alcoholic beverage sale establishments in order to promote successful business practices compatible with healthy economic growth, community safety, and quality of life of San Bernardino residents;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN BERNARDINO DOES ORDAIN AS FOLLOWS:

ARTICLE I - GENERAL

SECTION 1 – TITLE AND PURPOSE

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 San Bernardino and to prevent nuisance activities where alcoholic beverage sales occur.

Purpose:

To protect residential, commercial, industrial and civic areas and minimize the adverse impacts of nonconforming and incompatible uses; and

To provide opportunities for alcoholic beverage sales establishments to operate in a mutually beneficial relationship to each other and to other commercial and civic services; and

To 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; and

To provide that alcoholic beverage sales establishments are not the source of undue public nuisances in the community; and

To provide for properly maintained alcoholic beverage sales establishments so that the negative impacts generated by these activities are not harmful to the surrounding environment in any way; and

To monitor Deemed Approved establishments to ensure they do not substantially change in mode or character of operation.

SECTION II – 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.

(A) “Administrator” means the Administrative Hearing Officer as identified in Section III.

(B) “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.

(C) “Alcoholic Beverage Sales Activity” means the retail sale of alcoholic beverages for onsite or offsite consumption.

(D) "Alcoholic Beverage Sales Establishment" means an establishment where an alcoholic beverage sales activity occurs. Alcoholic beverage sales establishments include but are not limited to the following recognized types of establishments: liquor stores; beer and wine stores; convenience markets; 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, dance halls; cafes, bars, restaurants with bars; full-service restaurants; and fast food establishments.

(E) “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.

(F) “Conditions of Approval” means a requirement that must be carried out by the activity 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.

(G) “Deemed Approved Activity” means any Legal Nonconforming alcoholic beverage sales activity, as defined in subsection (J). 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.

(H) “Deemed Approved Status” means the permitted use of land for a Deemed Approved Activity. Deemed Approved status replaces Legal Nonconforming status with respect to Alcoholic Beverage Sales Commercial Activity and remains in effect as long as it complies with the Deemed Approved provisions and performance standards.

(I) “Illegal Activity” means an activity, which has been finally determined to be in noncompliance with the Deemed Approved provisions and performance standards. Such an activity shall lose its Deemed Approved status and shall no longer be considered a Deemed Approved activity.

(J) “Legal Nonconforming Alcoholic Beverage Sales Commercial Activity” or “Legal Nonconforming Activity” means an Alcoholic Beverage Sales Commercial Activity which was a nonconforming use pursuant to the Nonconforming Use Regulations and for which a valid state of California Alcoholic Beverage Control license had been issued and used in the exercise of the rights and privileges conferred by the license at a time immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale Regulations Ordinance. Such an activity shall be considered a Deemed Approved Activity and shall no longer be considered a Legal Nonconforming Activity.

(K) “Off-Sale Alcohol Outlet” means an establishment that conducts retail sales of Alcoholic Beverages for consumption off the premises where sold.

(L) “On-Sale Alcohol Outlet” means an establishment that conducts retail sales of Alcoholic Beverages for consumption on the premises where sold.

(M) “Operational Standards” means regulations for the business practice activities and land use for locations with a Conditional Use Permit or those further requirements imposed to achieve these goals. Operational Standards constitute requirements which must be complied with by an establishment in order to maintain its Conditional Use Permit.

(N) “Performance Standards” means regulations for the business practice activities and land use for locations with Deemed Approved status or those further requirements imposed to achieve these goals. Performance Standards constitute requirements which must be complied with by an establishment in order to retain its Deemed Approved status.

(O) “Permit” means a Conditional Use Permit issued pursuant to this ordinance.

(P) “Permittee” means the individual or entity that owns an alcoholic beverage sale establishment and to whom a Conditional Use Permit to operate an alcoholic beverage sale establishment has been issued by the City of San Bernardino.

(Q) “Premises” means the actual space within a building devoted to alcoholic beverage sales.

SECTION III – ADMINISTRATIVE HEARING OFFICER

The Administrative Hearing Officer shall be a City staff person or other designated person and shall conduct public hearings and make recommendations intended to encourage and achieve the compliance of particular alcoholic beverage sale establishments with the provisions of the Conditional Use Permit - Deemed Approved Alcoholic Beverage Sales Regulations Ordinance. This section is not intended to restrict the powers and duties otherwise pertaining to other City officers or bodies in the field of monitoring and ensuring the harmony of alcoholic beverage sale activities in the City. These parties shall have the powers and duties assigned to them by the Development Code, by the zoning regulations, by other codes and ordinances or by valid administrative authority.

SECTION IV - INSPECTION AND RIGHT OF ENTRY

The sale of alcoholic beverages is a closely regulated industry. The officials responsible for enforcement of the City Municipal Code or other provisions of the Development Code or their duly authorized representatives may enter on any site or into any structure for the purpose of investigation provided they shall do so in a reasonable manner whenever they have cause to suspect a violation of any provision of this ordinance or whenever necessary to the investigation of violations to the Conditions of Approval or Deemed Approved performance standards 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. All such inspections shall be conducted in compliance with the Fourth Amendment to the United States Constitution.

SECTION V - SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more of the sections subsections, sentences, clauses or phrases may be declared unconstitutional.

SECTION VI – PUBLICATION

The Mayor shall sign this ordinance and the City Clerk shall cause the same to be published within 15 days after its passage in at least once in a newspaper of general circulation published and circulated in the City of San Bernardino, California.

ARTICLE II – CONDITIONAL USE PERMITS FOR NEW ALCOHOLIC BEVERAGE SALES ACTIVITIES

SECTION I – PURPOSE

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 this ordinance and to achieve the following objectives:

- (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 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.
- (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.

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.

SECTION II – 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 III – RESTRICTIONS

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

(A) Within 500 feet of an existing alcoholic beverage sales activity.

(B) Within 500 feet of any of the following:

1. A public or private accredited school
2. A public park, playground or recreational area
3. A nonprofit youth facility
4. A place of worship
5. A hospital
6. An alcohol or other drug abuse recovery or treatment facility
7. A county social service office.

(C) 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.

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

SECTION IV – OPERATIONAL STANDARDS

All new alcoholic beverage sales activities shall be designed, constructed, and operated to conform to all of the following operational standards:

(A) That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.

(B) That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.

(C) 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.

(D) 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.

(E) 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.

(F) That the owners and all employees of the alcohol beverage sales establishment complete an approved course in "Responsible Beverage Sales" (RBS) within sixty (60) days of hire for employees hired after the passage of this ordinance or within 6 months of the passage of this ordinance for existing employees. To satisfy this requirement, 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.

(G) That all alcohol beverage sales activities pay an annual fee in order to defray the expense to the City for the Outreach and Education Program and Monitoring and Enforcement Activities.

A copy of these operational standards, any applicable ABC or City operating conditions, and any training requirements 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 V – ADMINISTRATION

The San Bernardino City Planning Commission shall administer Conditional Use Permits.

SECTION VI – PERMIT APPLICATION

Any person, association, partnership, corporation or other entity desiring to obtain an alcoholic beverage sales activity Conditional Use Permit shall file an application with the City of San Bernardino Development Department to forward to the San Bernardino City Planning Commission on a form provided by the City. The application shall be accompanied by a nonrefundable application processing fee in an amount established by a resolution of the San Bernardino City Council.

The application for a Conditional Use Permit shall contain the following information:

(A) 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.

(B) 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.

(C) The name, address, and telephone number of the person who shall manage and operate the establishment for which the permit is requested.

(D) 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.

(E) The name, address, and telephone number of all alcoholic beverage sale 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.

(F) The name, address, and telephone number of a person authorized to accept service of legal notices.

(G) The proposed business name of the alcoholic beverage sales activity establishment and description of all operating aspects of the proposed business.

(H) The type of ABC license the applicant is seeking for the alcoholic beverage sales activity establishment.

(I) Street address of the proposed alcoholic beverage sales activity establishment and the assessor parcel number for the property.

(J) 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.

(K) Any other information reasonably necessary to accomplish the purposes of this ordinance.

The 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.

SECTION VII – ACTION ON PERMIT APPLICATION

The Planning Commission shall approve issuance of the Conditional Use Permit to allow a new alcoholic beverage sales activity upon making the following findings:

(A) The proposed alcoholic beverage sales activity establishment is located in a zoning district in which the establishment is a permitted use.

(B) 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).

(C) 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.

(D) 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.

(E) The proposed establishment will otherwise be compatible with existing and potential uses within the general area.

(F) 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.

SECTION VIII – CONDITIONS OF APPROVAL

Reasonable Supplemental Conditions of Approval that may be imposed include but are not limited to the following:

Soundwalls: If the Deemed Approved Activity abuts residential areas a soundwall may be required between the establishment conducting the Deemed Approved Activity and the abutting residential areas. The soundwall must comply with all state and local requirements for construction and location 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 to improve the appearance of the soundwall.

Trash Receptacles: Permanent, non-flammable trash receptacles may be required to be located at convenient locations appropriately screened from view outside the establishment and in the establishment 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 250 feet of any boundary of its premises.

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

Program: A “complaint response community relations” program established and maintained by the establishment conducting the Deemed Approved Activity may be required. The program may include the following:

(A) Posting at the entry of the establishment providing the telephone number for the area commander of the local law enforcement substation to any requesting individual.

(B) Coordinating efforts with the police department to monitor community complaints about the establishment activities.

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

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 coin-operated amusement devices.

Prohibited Products: To discourage nuisance activities, an Off-Sale Alcohol Outlet may be prohibited from selling one or more of the following products:

(A) Wine or distilled spirits in containers of less than 750 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 14 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 (24 – 39) ounces.

(G) Distilled spirits in bottles or containers smaller than 375 milliliters.

(H) Cooler products, either wine- or malt beverage- based, in less than four-pack quantities.

Chilled Alcoholic Beverages: An Off-Sale Alcohol Outlet may be prohibited from maintaining refrigerated or otherwise chilled alcoholic beverages on the premises.

Hours of Operation: In an Off-Sale Alcohol Outlet, the sale of alcoholic beverages 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.

Cups: In Off-Sale Outlets, the sale or distribution to the customer of paper or plastic cups in quantities less than their usual and customary packaging may be prohibited.

Signs: The following signs may be required to be prominently pasted 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 21 years of age.”

(B) "No Loitering or Public Drinking."

(C) “It is illegal to possess an open container of alcohol in the vicinity of this establishment.”

Presentation of Documents: A copy of the Conditions of Approval and the California Department of Alcoholic Beverage Control license may be required to be kept on the premises and presented to any law enforcement officer or authorized state or county official upon request.

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, drug use, loud noise and litter.

Drug Paraphernalia: An Off-Sale Alcohol Outlet may be prohibited from selling drug/tobacco 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.

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.

Security Cameras: At least two 24-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 Police 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 operators may be required to provide any tapes or other recording media from the security cameras to the Police Department.

Security Guards: An establishment may be required to retain a specified number of security guards. The number of security guards shall vary based upon the specific facts and circumstances of each establishment site and operation. All security guards shall have all required state and City permits and licenses.

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 IX – APPEALS FROM A DETERMINATION ON AN APPLICATION FOR PERMIT

Any applicant or other person aggrieved by a decision of the Planning Commission on an application for a land use permit required by this Article may appeal the decision to the City Council.

SECTION X – GROUNDS FOR CONDITIONAL USE PERMIT SUSPENSION OR REVOCATION

An alcoholic beverage sales activity establishment Conditional Use Permit may be suspended by the Planning Commission for up to one year or revoked for failure to comply with operational standards, training requirements 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.

SECTION XI – INVESTIGATIVE PROCEDURES OF POTENTIAL VIOLATION OF CONDITIONS OF APPROVAL

The city shall appoint an Administrative Hearing Officer to conduct hearings, make findings and determine whether violations of this Article, including the Conditions operational standards, Conditions of Approval as well as whether undue negative impacts or public nuisance activities have occurred, are occurring or are likely to occur in the future. The assigned Administrative Hearing Officer shall exercise all powers relating to the conduct of the administrative hearing unless or until the decision of the Administrative Hearing Officer is appealed to the Planning Commission.

Upon the City's receipt of a complaint from the public, Police Department, City official or any other interested person that a Conditional Use Permit activity is in

violation of the operational standards and/or Conditional of Approval set forth in this Article, the following procedure shall be followed:

(A) City Code Enforcement Officer (or other designated City representative) shall 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 operational standards and/or Conditions of Approval. The Enforcement Officer shall 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.

(B) If violations are observed during the observation and inspection, the Enforcement Officer shall 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 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 and shall set forth a reasonable period of not less than 30 calendar days within which to abate any violations.

(C) At the end of the abatement period prescribed in the "Notice to Abate", the Code Enforcement Officer shall 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 efforts to compel compliance with operational standards and/or Conditions of Approval by the owner of the activity is likely, the officer shall determine that the activity is in persistent violation of the operational standards and/or Conditions of Approval and shall refer the matter and all material evidence to the Administrative Hearing Officer for adjudication. 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.

(D) Upon referral from the Code Enforcement Officer that an activity is in persistent violation of the operational standards and/or Conditions of Approval of this Article, the operating status of the activity in question shall be reviewed by the Administrative Hearing Officer at a public hearing. The purpose of the administrative hearing is to receive information as to whether the activity is in compliance with the operational standards and/or Conditions of Approval.

(E) The Administrative Hearing Officer shall determine whether the activity is in compliance with the operational standards and/or Conditions of Approval. Based on this determination, the officer may continue the Conditional Use status for the use in question, may impose administrative penalties for violations of the operational standards and/or Conditions of Approval or may revoke the activity's Conditional Use Permit. If the officer determines instead to impose further, new conditions on the activity, such conditions shall be based upon the information then before the 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 officer may consider:

1. The length of time the activity has been out of compliance with the performance standards.
2. The impact of the violation of the operational standards and/or Conditions of Approval on the community.
3. Any information regarding the owner of the activity's efforts to remedy the violation of the operational standards and/or Conditions of Approval.

(F) "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 operational standards and or Conditions of Approval cease those activities, unless the owner of the 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 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.

(G) If in the judgment of the Administrative Hearing Officer, the operations of the owner of the 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 officer may revoke the activity's Conditional Use permit.. All determinations, decisions, and conditions made or imposed regarding the use of a activity shall run with the land.

(H) The decision of the Administrative Hearing Officer shall become final 10 days after the service of the decision is deemed complete unless appealed to the Planning Commission.

SECTION XII – APPEAL FROM SUSPENSION OR REVOCATION OF CONDITIONAL USE PERMIT

Any applicant or other person aggrieved by a decision of the Planning Commission from a suspension or revocation of a Conditional Use Permit may appeal the decision to the City Council.

ARTICLE III – STANDARDS AND PROCEDURES FOR EXISTING DEEMED APPROVED ALCOHOLIC BEVERAGE SALES ACTIVITIES

SECTION I – PURPOSE

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:

- (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 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.
- (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.

SECTION II – APPLICABILITY

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 ordinance.

SECTION III – AUTOMATIC DEEMED APPROVED STATUS

All Alcoholic Beverage Sales Commercial Activities that were Legal Nonconforming Activities immediately prior to the effective date of this ordinance shall automatically become Deemed Approved Activities as of the effective date of this ordinance and shall no longer be considered Legal Nonconforming Activities.

Each deemed approved activity shall retain its Deemed Approved status as long as it complies with the performance standards of this ordinance.

The occurrence of any of the following shall terminate the Deemed Approved status of the alcoholic beverage sales activity and require the issuance of a Conditional Use Permit in order to continue the alcoholic beverage sales activity.

(A) An existing alcoholic beverage sales activity changes its activity so that ABC requires a different type of license.

(B) There is a substantial modification to the mode or character of operation.

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

1. 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.
2. 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.
3. The off-site or on-site alcoholic beverage sales activity establishment expands 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.
4. The off-site or on-site alcoholic beverage sales activity establishment extends the hours of operation.
5. 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 ABC.
6. The alcoholic beverage sales activity voluntarily discontinues active operation for more than 90 consecutive days or ceases to be licensed by the ABC.

(D) A substantial change in the mode of character of operation shall not include:

1. Re-establishment, restoration or repair of an existing alcoholic beverage sales 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.
2. Temporary closure for not more than ninety 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.

(E) 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 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.

SECTION IV – DEEMED APPROVED PERFORMANCE STANDARDS

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 this Article.

An alcoholic beverage sales activity shall retain its Deemed Approved status only if it conforms to all of the following Deemed Approved performance standards:

(A) That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.

(B) That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.

(C) 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.

(D) 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.

(E) 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.

(F) That all alcohol beverage sales activities pay an annual fee in order to defray the expense to the City for the Outreach and Education Program and Monitoring and Enforcement Activities. A copy of these performance standards, any applicable ABC or City operating conditions, and any training requirements 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.

(G) That the owners and all employees of the alcohol beverage sales establishment complete an approved course in "Responsible Beverage Sales" (RBS) within 60 days of hire for employees hired after the passage of this ordinance or within six months of the passage of this ordinance for existing employees. To satisfy this requirement, 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.

SECTION V – NOTIFICATION TO OWNERS OF ESTABLISHMENTS CONDUCTING DEEMED APPROVED ACTIVITIES

The City or its designated Administrative Hearing Officer 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 this Article 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 review fee is required 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 Article shall not affect the Deemed Approved status of the activity.

SECTION VI - DEEMED APPROVED STATUS PROCEDURES

The city shall appoint an Administrative Hearing Officer to conduct hearings, make findings and determine whether violations of this Article, including the Deemed Approved performance standards, Conditions of Approval, undue negative impacts or public nuisance activity, have occurred, are occurring, or are likely to occur in the future. The assigned Administrative Hearing Officer shall exercise all powers relating to the conduct of the administrative hearing unless or until the decision of the Administrative Hearing Officer is appealed to the Planning Commission.

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 this Article, the following procedure shall be followed:

(A) City Code Enforcement Officer (or other designated City representative) shall 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. The Enforcement Officer shall 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.

(B) If violations are observed during the observation and inspection, the Enforcement Officer shall 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 and shall set forth a reasonable period of not less than 30 calendar days within which to abate any violations.

(C) At the end of the abatement period prescribed in the “Notice to Abate”, the Code Enforcement Officer shall 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 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 Administrative Hearing Officer for adjudication. 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.

(D) Upon referral from the Code Enforcement Officer that a Deemed Approved activity is in persistent violation of the performance standards of this Article, the operating status of the Deemed Approved activity in question shall be reviewed by the Administrative Hearing Officer at a public hearing. The purpose of the administrative hearing is to receive information as to whether the Deemed Approved activity is in compliance with the performance standards.

(E) The Administrative Hearing Officer shall determine whether the Deemed Approved activity is in compliance with the performance standards. Based on this determination, the 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 officer necessary to ensure compliance with the performance standards and may revoke the Deemed Approved activity’s Deemed Approved status. If the officer determines instead to impose further, new conditions on the Deemed Approved activity, such conditions shall be based upon the information then before the 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.

2. The impact of the violation of the performance standard(s) on the community.
3. Any information regarding the owner of the Deemed Approved activity's efforts to remedy the violation of the performance standard(s).

(F) "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.

(G) If in the judgment of the Administrative 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 officer may revoke the activity's Deemed Approved status. Any continued operation of the business shall require a Conditional Use Permit approved by the Planning Commission. All determinations, decisions, and conditions made or imposed regarding the use of a Deemed Approved activity shall run with the land.

(H) The decision of the Administrative Hearing Officer shall become final 10 days after the service of the decision is deemed complete unless appealed to the Planning Commission.

(I) The decision of the Planning Commission shall become final 10 days after the service of the decision is deemed complete unless appealed to the City Council.

ARTICLE IV - ALCOHOLIC BEVERAGE SALES ACTIVITY FEES AND PENALTIES

SECTION I – ANNUAL PERMIT FEES

The City Council shall establish by resolution an annual use permit fee that shall be imposed on each alcoholic beverage establishment issued a use permit pursuant to the provisions of this ordinance, including any new or modified establishment or deemed approved establishment issued a permit pursuant to this ordinance. The annual use permit fee shall be assessed for each alcoholic beverage establishment on a sliding scale based on:

(A) The hours of operation that alcohol is sold at the establishment.

(B) The volume of alcohol sales at the establishment.

(C) The number of police calls for service at the establishment.

(D) The estimated annual costs of the police services necessary to monitor and enforce the operational standards and other use permit conditions and requirements for all establishments within that license category.

(E) The estimated staff costs to bill and collect the annual permit fee.

Billing and Payment: All annual permit fees imposed on an alcoholic beverage establishment operating under a use permit issued in the manner provided for by this ordinance including Deemed Approved establishments shall be billed by the administrative services department on or before the 1st day of January of each year. The fee is due and payable immediately upon receipt, and will be delinquent if not paid within 30 days of the bill's mailing.

Establishment of Alcohol Permit Fee Account:

(A) The City shall establish an "Alcohol Permit Fee Account" for the collection of the fees described in this ordinance.

(B) Funds from the "Alcohol Permit Fee Account" shall be used only to recover the cost of the services including education, inspections, enforcement operations and administrative hearings, related to the monitoring and enforcement of the performance standards, conditions of operation and regulations established for licensed alcohol establishments in this ordinance.

Report of expenditure of fees to be collected:

(A) Not later than the last meeting of October in each calendar year, the Administrative Hearing Officer shall submit to the City Council a report on the expenditures of the total of annual alcohol permit fees collected.

(B) The report shall set forth such matters as:

1. The prioritization of problems regarding enforcement of the performance standards, conditions and regulations as set forth in this

ordinance related to the operation of licensed alcohol establishments in the City.

2. Methods of mitigating such problems, through prevention, education and enforcement of the performance standards, conditions and regulations.

3. The specific allocation of the fees to be collected to activities described in the report.

SECTION II – PENALTIES

Any person who violates, causes or permits another person to violate any provision of this ordinance is guilty of either an infraction or misdemeanor as determined by the San Bernardino City Municipal Code. Any person convicted of either an infraction or misdemeanor under the provision of this ordinance shall be punished by a fine imprisonment or both according to state law.

Separate Offenses for Each Day: Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of these regulations is committed, continued, permitted, or caused by such violator and shall be punishable accordingly.

Any Violation a Public Nuisance: In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provisions of these regulations shall be and is declared to be a public nuisance and may be abated as such by the City.

Injunction as Additional Remedy: 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.

Administrative Penalties: In addition to any other penalties provided in this section, the following administrative penalties shall apply for any for each and every day during any portion of which any violation of any provision of these regulations is committed, continued, permitted, or caused by such violator:

(A) For the first citation in any one-year period the penalty shall be the total sum of \$250.00.

(B) For the second citation in any one-year period the penalty shall be the total sum of \$500.00.

(C) For the third citation in any one-year period the penalty shall be the total sum of \$1000.00.

(D) For each and every subsequent citation in any one-year period the penalty will be \$1000.00 a day to a maximum of \$250,000.00 a year.

The City shall bill all persons liable for the penalties by mail showing the itemized cost of such chargeable service and requesting payment. Payment of the penalties shall be due within thirty 30 days of the date of the bill is deposited in the Mail. If full payment is not received within the required time for payment the bill will be delinquent and all persons liable for the penalties shall be charged interest at the maximum legal rate from the date the payment period expires and a further civil penalty in the amount of \$100.00. The delinquent costs may be placed as a lien against the property or collected by the City in any manner authorized bylaw and are recoverable in a civil action filed by the City in a court of competent jurisdiction.

Liability for Expenses: 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. Re-inspection fees to ascertain compliance with previously noticed or cited violations shall be charged against the owner of the establishment conducting the Deemed Approved Activity or owner of the property where the establishment is located. 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.

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