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**Regular Council Meeting
12/09/2021**

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CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Information Packet

ITEM(S)

File ID 21-1019, 1-Y

***BILL B-48 (Intro. 12/2/2021) (For Adoption) – Amending Section 15-2706 to the Fresno Municipal Code, relating to the use regulations for alcohol sales (Subject to Mayor’s Veto).

Contents of Supplement:

Amended Ordinance (V.2) – Use Regulations for Alcohol Sales

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk’s Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk’s website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk’s Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING CHAPTER 15, ARTICLE 27, SECTION 15-2706 OF THE FRESNO MUNICIPAL CODE RELATING TO THE SALE OF ALCOHOLIC BEVERAGES FOR OFF-SITE CONSUMPTION, AMENDING SECTION 15-2706 "THE RESPONSIBLE NEIGHBORHOOD MARKET ACT"

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 15-2706 of the Fresno Municipal Code is amended to read:

SECTION 15-2706. - ALCOHOL SALES THE RESPONSIBLE NEIGHBORHOOD MARKET ACT.

A. Regulations for On-Site Consumption. Refer to Section 15-2751, Restaurants with Alcohol Sales, Bars, Nightclubs, and Lounges for standards.

B. Regulations for Wholesalers. Operators who hold a Type 17 ABC license for the purpose of selling beer and wine to retailers or a type 18 ABC license for the purpose of selling distilled spirits to retailers, who meet the definition of a "wholesaler" within the meaning of California Business and Professions code Section 23021, and who are located within the City of Fresno are subject to the following restrictions:

1. Wholesalers shall not supply establishments (as defined below) with any items that would violate this Section of the Fresno Municipal Code.

1 of 19

Date Adopted:
Date Approved
Effective Date:
City Attorney Approval



Ordinance No.

C. Purpose. The following regulations, known as “The Responsible Neighborhood Market Act,” are for establishments that sell alcoholic beverages for off-site consumption not otherwise exempt under Section 15-2706 D.2 (henceforth "establishment"). These establishments possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when such establishments are concentrated near one another. In order to ensure that establishments operate in a manner that is mutually beneficial to surrounding uses and to also provide mechanisms to prevent and correct any associated problems, the following special regulations are provided.

D. Applicability.

1. New or Expanded Use. Any proposed new establishment or any existing establishment that requests to modify their alcohol or business license type(s), reinstate their alcohol or business license(s) after an expiration or revocation, extend their hours of alcohol sales, or expand their floor area for retail sales of alcohol, shall obtain a Conditional Use Permit issued in compliance with the standards of this section. An existing establishment that expands their floor area for non-alcohol related retail sales is allowed to retain the conditions on their existing Conditional Use Permit in relation to alcohol requirements. Should an establishment not comply with the strict application of the regulations provided for

in this section, said improvements shall be made prior to commencing the sale of alcoholic beverages. Violation of these standards at any time may result in the revocation of a Conditional Use Permit.

2. Exemptions. This section does not apply to the following:

a. Establishments that serve alcohol for on-site consumption, where an off-site sales component is incidental to the main use and as permitted through an establishment's ABC Conditional Use Permit License Type.

b. Temporary uses issued a Temporary License by the California Department of Alcoholic Beverage Control and established in compliance with all City laws and ordinances.

3. Conditional Use Permit. Conditional Use Permits issued pursuant to this section shall also be subject to the following:

a. ABC Conditional Use Permit:

i. Establishments seeking to sell alcoholic beverages for off-site consumption, whether as a new or expanded use, shall obtain a Conditional Use Permit for alcohol sales.

E. Modifications to Existing Establishments. A modification to an existing establishment shall not be approved when a condition exists

that has caused or resulted in repeated activities that are harmful to the health, peace, or safety of persons residing or working in the surrounding area.

F. Location Restrictions for New Establishments. The following location restrictions apply to new establishments, unless the establishment can be found qualified for exception by the Review Authority. These location restrictions shall apply to existing establishments that must obtain a CUP pursuant to this ordinance due to proposed expansion or improvement of an existing use that is currently operating pursuant to a CUP issued prior to the effective date of this ordinance unless the proposed expansion or improvement is only with respect to a necessary repair, or bringing the existing establishment into compliance with current building codes, including but not limited to the California Building Code, the California Fire Code, and the California Electrical Code, as may be amended and any local amendments thereto.

1. Near Sensitive Uses. The establishment shall not be located within 1,000 feet of the following:

a. A public park, playground, recreational area including a trail that is immediately adjacent to a public park, or youth facility, including a nursery school, preschool, or day care facility;

b. A public or private State-licensed or accredited school; or

c. An alcohol or other drug abuse recovery or treatment facility.

2. Near Other Alcoholic Beverage Establishments. The establishment shall not be located within 1,000 feet of an existing establishment, nor may it lead to a grouping of more than four establishments within a 1,000 foot radius. Notwithstanding this requirement, an establishment shall not be located within 500 feet of an existing establishment when an establishment is located in a Census Tract that is not oversaturated with off-sale licenses.

3. Within High Crime Areas. The establishment shall not be located in an area of high crime, as defined by the California Business and Professions Code 23958.4(a)(1) et seq., and as determined by the Department of Alcoholic Beverage Control.

4. Within High Concentration Areas. The establishment shall not be located in an area of high concentration, as defined by the California Business and Professions Code 23958.4(a)(3) et seq., and as determined by the Department of Alcoholic Beverage Control.

5. Citywide Ratio. No establishment shall be granted a Conditional Use Permit under this section if the number of sites selling alcohol for off-site consumption will exceed one license per 2,500 residents. This ratio requirement shall not apply to: (1) existing establishments that must obtain a CUP pursuant to this

ordinance due to proposed expansion or improvement of an existing use that is currently operating pursuant to a CUP issued prior to the effective date of this ordinance; (2) new establishments that utilize the Cancel and Transfer provisions stated in Section S., below; or (3) an existing establishment that is in good standing which has a change in the ABC License holder, specifically partner franchisees.

6. Exceptions. A new establishment may be excepted from location restrictions if the Review Authority determines all of the following:

a. The proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

b. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

c. The proposed outlet for the off-premises sale of alcoholic beverages would act as a public convenience or

necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety.

d. The primary use of the establishment, based on information provided by the applicant, has been determined by the Review Authority to meet the definition of a General Market including a supermarket, neighborhood grocery store or a Healthy Food Grocer.

[7. Existing establishment relocation exception. An existing establishment that relocates and holds a Conditional Use Permit pursuant to this ordinance may be excepted from the location restrictions if the proposed relocation is located: (a) across the street and within a 1/4 mile radius of the current location; (b) within the same Council District; (c) within the same Census Tract; (d) not within 500 feet of a nursery school, preschool, a public or private State-licensed or accredited school or daycare facility; and (e) not in an area of high crime, as defined by the California Business and Professions Code 23958.4(a)(1) et seq., and as determined by the Department of Alcoholic Beverage Control. The original location will be required to forfeit its existing alcohol entitlements for the original location. Written notice shall be provided to all property owners

within a 1,500-foot radius of the subject property for the proposed relocation.]

G. Landscaping.

1. New Buildings. Landscaping shall be provided per the underlying District.

2. Existing Buildings. Perimeter landscaping and Parking Lot Shading shall be provided per the underlying district. The Review Authority, at their discretion, may make exceptions to the prescribed standards, however in no case shall the reduction result in a net reduction of 35 percent or greater in the amount of landscaping provided. Landscaping may also be aggregated to minimize the impact on existing parking areas.

H. Lighting. The exterior of the premise, including adjacent public sidewalks and all parking lots under the control of the establishment, shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, required illumination shall be placed and or shielded in a way that minimizes interference with the neighboring residences.

I. Litter and Graffiti.

1. Trash and recycling receptacles shall be provided by public entrances and exits from the building.

2. The owner or operator shall provide for daily removal of trash, litter, and debris from premises and on all abutting sidewalks within 20 feet of the premises.

3. The owner or operator shall remove graffiti within 48 hours.

J. Pay Phones and Vending Machines. External pay phones and snack vending machines are prohibited.

K. Video Surveillance.

1. Establishments must equip a fully functional color digital video camera system.

2. The system must continuously record, store, and be capable of playing back images and be fully functional at all times, including during any hours the business is closed. The system must be maintained in a secured location inside of the business.

3. The system shall have the correct date and time stamped onto the image at all times.

4. The camera storage capacity should be for at least two weeks (14 calendar days). Such cameras must be capable of producing a retrievable and identifiable image than can be made a permanent record and that can be enlarged through projection or other means.

5. If utilizing a digital video recorder, it must be capable of storing at least 14 days of real-time activities.

6. The system shall be capable of producing a CD or digital playback feature and may be provided to an authorized representative of the Fresno Police Department within 24 hours of the initial request relating to a criminal investigation only.

7. The interior of the business must have at least one camera placed to focus on each cash register transaction to include the clerk as well as the customer waiting area.

8. There shall be four exterior cameras placed so as to record activities in the primary customer parking areas of their business. These cameras should be of sufficient quality to be able to identify persons and or vehicles utilizing the business parking lot.

9. All interior cameras shall record in color.

10. All exterior cameras shall record in color and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.

L. Signage.

1. The provisions specified under Article 26, Signs and this subsection shall apply. Where conflict may occur between the provisions of Article 26 and this subsection, the more restrictive provisions shall govern.

2. The following copy is required to be prominently posted in a readily visible manner on an interior wall or fixture and not on windows:

a. "California State Law Prohibits the Sale of Alcoholic Beverages to Persons Under 21 Years of Age."

b. "No Loitering is Allowed On or In Front of These Premises."

c. "No Open Alcoholic Beverage Containers are Allowed on These Premises."

3. No more than 5 percent of the square footage of each window and clear door that is visible to the public from a public thoroughfare, sidewalk, or parking lot of an off-sale alcohol retail outlet shall bear advertising, signs, or other obstructions of any sort.

a. The area covered by signs or advertising includes all clear areas within signs or advertising, such as the clear area within neon signs.

b. Signage, advertising, or other obstructions inside or outside the establishment that are not physically attached to the windows or doors, but are visible from a public thoroughfare, sidewalk, or parking lot in the same manner as if they were physically attached is included in the 5 percent limitation.

c. Any signage required by law shall not count towards the 5 percent limitation, but shall nonetheless follow rules related to visual obstruction.

4. Advertising and signage on windows and clear doors 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 outlets, including the area in which the cash registers are maintained, from exterior public sidewalks, parking lots, or entrance to the outlets.

5. Any establishment located within 250 feet of a sensitive use, as listed in Subsection E.1, shall not advertise alcohol sales in a manner visible from the outside of the establishment, such as from a public thoroughfare, sidewalk, or parking lot.

6. Displays of alcoholic beverages, freestanding advertising structures of any kind such as cardboard floor stands, or other free-standing signs shall be prohibited within 10 feet of consumer entrance points, shall not be visible from the exterior of the establishment, and shall be prohibited on the exterior of the establishment.

M. Loitering and Other Nuisance Activities. The operation of the establishment shall not result in repeated nuisance activities on the property, which may include, but are not limited to, repeated disturbances

of the peace, illegal drug activity, public drunkenness, drinking in public, alcoholic beverage and tobacco sales to minors, harassment of passerby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, graffiti, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or other violations of City, State, or federal laws, especially when contributing to a proportionally high rate of police reports and arrests to the area. This section shall not apply to operators where offenses are the result of third party conduct beyond the operators' control.

N. Training. The owners and all employees of the establishment who are involved in the sale of alcoholic beverages must complete approved course(s) in training of liquor sales and handling within sixty days after approval of the Conditional Use Permit becomes final, or for employees hired after the approval of the Conditional Use Permit, within sixty days from the date of hire. 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 or licensing body designated by the State of California.

O. Compliance with Laws. The establishment must remain in compliance with all local, State, and federal laws, regulations, and orders, as well as all conditions of approval imposed on the use. This includes compliance with annual City business license fees. In the event of non-

compliance, the operator shall be given written notice by the City and an opportunity to cure. Article 63 of Chapter 15, regarding Enforcement of the Citywide Development Code shall also apply in relation to compliance issues, in addition to the annual inspection requirements listed within Section R, below.

P. Posting of Conditions. A copy of all conditions of approval and training requirements shall either be posted in a conspicuous and unobstructed place near the entrance, cashier counter, or customer service area of the establishment or posted in an employee area and provided upon request (e.g. via flyer or brochure) to patrons and enforcement officials.

Q. Prohibited Products. The sale or distribution of one or more of the following shall be prohibited.

1. Wine in containers of less than 750 milliliters.
2. Single containers of beer, malt liquor, wine coolers, and similar alcoholic beverages not in original factory packages of three-packs or greater, subject to the following exception:
 - a. Craft beer which is originally packaged in a single 22 oz. bottle.
3. Distilled spirits in containers of less than 375 milliliters.
4. Paper or plastic cups in quantities less than their usual and customary packaging.

R. Additional Requirements.

1. The Director may require the applicant to submit additional information, of such type and in such form as the Director may specify, as the Director may deem relevant to the application, including, but not limited to, an operational statement, floor plans, architectural renderings, and technical studies, as appropriate.

2. The Director may refer the application to other City departments to determine whether the establishment's location will comply with 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, and may subsequently prepare reports summarizing their inspections and recommend whether to approve or deny the application based on their inspections.

3. Additional and/or security measures such as reduced hours of operation, security guards, door monitors, and burglar alarm systems may be required if harm, nuisance, or related problems are demonstrated to occur as a result of business practices or operations. This will be determined on a case-by-case basis upon review by the Police Department.

4. Establishments shall not acquire an ABC license for use that has been temporarily surrendered by another

establishment in any jurisdiction, or is from an establishment located outside the City of Fresno or a County island within the City of Fresno. Establishments must comply with the Cancel and Transfer provisions, set forth below, which require an establishment to acquire active ABC licenses from overconcentrated areas in the City of Fresno.

5. Establishments shall be subject to annual inspection to ensure compliance with this section and any additional conditions of the Conditional Use Permit. If an annual inspection results in a finding that an operator is not in compliance with this section or the specific conditions of the CUP, that finding may be used as a basis for revoking the CUP. An establishment that is subject to a revocation proceeding will be referred to the Responsible Neighborhood Market Act Committee for review and prior to the start of the revocation process.

a. If an operator is determined to be out of compliance with this section or the specific conditions of the CUP, that operator shall be subject to administrative fines set forth in the Master Fee Schedule as may be amended; the fine structure shall consist of progressively higher fines for violations occurring within twelve months of a prior violation, and upon the fourth violation being upheld within a

three year period of the first violation, the CUP for the business shall be subject to revocation.

b. If an establishment operating under an existing ABC license is purchased by a unassociated and unrelated new operator seeking to continue operation of the establishment, and the new operator is not subject to administrative fines as set forth above at any other establishment in the City, the City Manager, with concurrence of the City Attorney, may waive any administrative fines imposed upon the existing establishment upon transfer to the new operator, if the new operator agrees to and obtains a new CUP.

S. Cancel and Transfer.

1. New establishments shall transfer and cancel ABC licenses in good standing as set forth in Table 15-2706 below, from within a Council District identified as having an overconcentration of ABC licenses for off-sale use, as determined by the Director following review of data prepared by the California Department of Alcoholic Beverage Control. The ABC license will be submitted to the Alcoholic Beverage Control for permanent cancellation. A canceled ABC license cannot be reactivated or reinstated.

TABLE 15-2706: CANCEL AND TRANSFER RATIO		
Retail Floor Area	Transfer	Cancel
Less than 10,000 square feet	2	1

10,000 to 30,000 square feet	3	2
More than 30,000 square feet	4	3

2. Each ABC license that is canceled also includes surrender of the alcohol-sales portion of all related Conditional Use Permits and waiver of any legal non-conforming use rights related to the sale of alcohol for off-site consumption.

3. Exemptions.

a. The Cancel and Transfer requirements shall not apply when an establishment is required to relocate as the result of a taking by eminent domain and a license transfer to a new establishment site is necessary due to such taking.

b. Existing establishments that seek to expand their floor area or extend their operating hours.

[c. Existing establishments that seek to relocate if the proposed relocation meets the requirements of Section 15-2706 F.7.]

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2021.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2021
Mayor Approval/No Return: _____, 2021
Mayor Veto: _____, 2021
Council Override Vote: _____, 2021

TODD STERMER, CMC
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY: _____
Rina M. Gonzales Date
Senior Deputy City Attorney