

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 OFFSITE CONSUMPTION

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:

SEC. 15-2706. - ALCOHOL SALES

- A. Regulations for On-Site Consumption. Refer to Section 15-2751, Restaurants with Alcohol Sales, Bars, Nightclubs, and Lounges for standards.
- B. Purpose. The following regulations are for establishments that sell alcoholic beverages for off-site consumption (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
- C. 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 operation, or expand their floor area, shall obtain a Conditional Use Permit~~[, which shall be called an "ABC CUP",]~~ issued in compliance with the standards of this section. 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 [an ABC CUP].

[2. Filed Independent of Development Applications. ABC CUPs requesting authorization to sell alcohol for off-site consumption shall be filed independently from other Development Applications.]

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

- a. Establishments that are 10,000 square feet or larger.
- b. Establishments that serve alcohol for on-site consumption, where an off-site sales component is incidental to the main use.
- c. Temporary uses issued a Temporary License by the California Department of Alcoholic Beverage Control [(CA ABC)] and established in compliance with all City laws and ordinances.

[d. Wholesalers, who hold a Type 17 or Type 18 ABC license, who meet the definition of a “wholesaler” within the meaning of California Business and Professions code section 23021, of any size shall only be subject to Subsection P.]

D. 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.

E. Location Restrictions for New Establishments. The following location restrictions apply, unless the establishment can be found qualified for exception by the Review Authority.

1. Near Sensitive Uses. The establishment shall not be located within 500 feet of the following:
 - a. A public park, playground, recreational area, 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] 500 feet of an existing establishment~~[, nor may it lead to a grouping of more than four establishments within a 1,000 foot radius]~~.
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~~[, nor may the number of establishments subject to this Section exceed 60 per Council District]~~.
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. Out-of-City License Transfer. The establishment shall not seek to transfer a license from a location outside of city limits.]
6. Exceptions. A new establishment may be excepted from location restrictions if the Review Authority determines any 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 [and would provide retail services such as a full-size grocery store, supermarket, or household goods store.]

F. 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.

G. 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.

H. 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.

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

J. 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.

K. Signage and Alcohol Displays.

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 15 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 15 percent limitation.
 - c. Any signage required by law shall not count towards the 15 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, may 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 or freestanding advertising structures such as cardboard stands shall be placed no closer than 10 feet from any consumer entrance points and shall not be visible from the exterior of the establishment.]

- L. 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.
- M. 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.
- N. 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.

O. 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.

P. 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 [deemed not "craft beer"], malt liquor, wine coolers, and similar alcoholic beverages not in original factory packages of four-packs or greater.
3. Distilled spirits in containers of less than 375 milliliters.
4. Paper or plastic cups in quantities less than their usual and customary packaging.

[5. Craft beer is defined as a beer or malt beverage manufactured by a brewer that meets all of the following criteria:

A. Produces six million barrels of beer or less annually;

B. Less than 25 percent of the craft brewery is owned or controlled by an alcohol industry member; and,

C. A majority of total beverage alcohol volume in beers derives flavor from traditional or innovative brewing ingredients and their fermentation.]

[Q. Expiration.

1. ABC CUPs shall expire, based on Table 15-2706-Q-1, from the issuance of a Certificate of Occupancy, or commencement of the use should no Certificate of Occupancy be required, should the permit not be renewed.

TABLE 15-2706-Q-1 ABC CUP EXPIRATION

<i>Applicant / Site Circumstance</i>	<i>Expiration, from date of approval</i>
First ABC CUP at establishment	One year
First ABC CUP for individual, <u>who has no previous or existing licenses in good standing from CA ABC</u>	One year
All other instances	Five years

2. Establishments with expired ABC CUPs shall cease all sales of alcoholic beverages and remove all signage advertising alcohol beverages.
3. Expiration Schedule. The provisions of any active ABC CUP specifically related to the sale of alcohol for off-site consumption shall expire based on the schedule shown in Table 15-2706-Q-2.

TABLE 15-2706-Q-2 EXISTING CONDITIONAL USE PERMIT EXPIRATION SCHEDULE

<i>Conditional Use Permit Approved</i>	<i>Expiration, from the effective date of this section</i>
September 7, 1994 and earlier	Two years
Between September 8, 1994 and December 31, 2005	Three years
From January 1, 2006 up to the effective date of this section	Four years

R. Renewal.

1. Renewed ABC CUPs shall expire five years from date of approval. Subsequent renewals shall expire five years from prior renewal date.

2. Renewal applications accepted no later than one year after an ABC CUP expires shall be deemed a renewal, and may be subject to reduced application fees, at the discretion of the Director.

S. Enforcement. Establishments that have been issued an ABC CUP pursuant to this Section shall be subject to annual inspections by the City to ensure compliance with the ABC CUP. If an annual inspection results in a finding that an operator is not in compliance with the ABC CUP, that finding may be used as a basis for revoking, modifying, or denying renewal of the ABC CUP].

Q[T]. 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.

SECTION 4: This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

DRAFT

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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing Ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the ____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2017
Mayor Approval/No Return: _____, 2017
Mayor Veto: _____, 2017
Council Override Vote: _____, 2017

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
TALIA KOLLURI-BARBICK
Supervising Deputy City Attorney

TLK:nd,prn (73967nd/tkb)