



RESOLUTION NO. 2015-249

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, INITIATING A TEXT AMENDMENT TO THE ZONING ORDINANCE OF THE CITY OF FRESNO PURSUANT TO FMC SECTIONS 12-402 AND 15-5803 TO AMEND ZONING AND USE REGULATIONS FOR THE SALE OF ALCOHOLIC BEVERAGES FOR OFFSITE CONSUMPTION WITHIN THE CITY OF FRESNO

WHEREAS, California law permits sale of alcoholic beverages for off-site consumption; and

WHEREAS, the sale of alcoholic beverages for off-site consumption is regulated by the California Department of Alcoholic Beverage Control pursuant to California Business and Professions Code Section 23000, *et seq*; and

WHEREAS, the sale of alcoholic beverages for off-site consumption creates unique challenges for the City of Fresno in maintaining the public health, safety, and welfare; and

WHEREAS, pursuant to California Government Code Section 65850, the Council of the City of Fresno has the authority to regulate the use of buildings, structures and land within the City; and

WHEREAS, the City Council desires to further refine the standards required of establishments that sell alcohol for off-site consumption so as to ensure continued public health, safety, and welfare of the City's residents; and

WHEREAS, Section 12-402-A of the Fresno Municipal Code provides for initiation of a text amendment to the City's Zoning Ordinance through a Council Resolution of Initiation; and

Date Adopted: 12/17/2015
Date Approved: 12/17/2015
Effective Date: 12/17/2015

Resolution No. 2015-249



WHEREAS, on December 3, 2015, the Council of the City of Fresno voted to adopt Ordinance Bill No. B-43, adding Chapter 15 to the Fresno Municipal Code, which is a comprehensive update to the City's Zoning Ordinance and is referred to as the "Citywide Development Code"; and

WHEREAS, the Citywide Development Code will be effective on January 3, 2016; and

WHEREAS, the Citywide Development Code contains Section 15-5803 of the Fresno Municipal Code, relating to initiation of legislative matters; and

WHEREAS, Section 15-5803-A(1) also provides for initiation of a text amendment through a Council Resolution of Initiation.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Pursuant to Fresno Municipal Code, Sections 12-402-A and 12-401-A-1, and Fresno Municipal Code Sections 15-5803-A-1, the Council initiates the necessary proceedings to amend the text of the City of Fresno's Zoning Ordinance so as to further refine Conditional Use Permit standards and miscellaneous additional requirements for the sale of alcohol for off-site consumption.

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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 17th day of December, 2015.

AYES : Brand, Brandau, Caprioglio, Olivier, Quintero, Soria, Baines
NOES : None
ABSENT : None
ABSTAIN : None

YVONNE SPENCE, CMC
City Clerk

BY: Yvonne Spence
Deputy

APPROVED AS TO FORM:

DOUGLAS T. SLOAN

City Attorney

BY: Talia Kolluri-Barbick [Date] 12/31/15
Senior Deputy City Attorney

TKB:jd [69901]d/tkb] 12-10-15

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 OFFSITE CONSUMPTION

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

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

15-2706-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 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 a Conditional Use Permit.

2. 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 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 offsite consumption, whether as a new or expanded use, shall obtain a dedicated Conditional Use Permit for alcohol sales which shall be called an "ABC CUP." The ABC CUP shall be separate, distinct, and severable from any Conditional Use Permit related to the underlying use. For example, if a store is required to obtain a CUP for operation of the store, that CUP shall be for the underlying use and an ABC CUP for the purposes of selling alcohol shall be a separate and distinct CUP.

ii. An ABC CUP, and all the rights contained therein, shall expire five years from the date of issuance. Upon expiration of the ABC CUP, the establishment must cease the sale of alcohol for offsite consumption and shall not resume alcohol sales until such time as a new ABC CUP is approved.

iii. An application for a new ABC CUP after expiration of an existing CUP shall be termed a renewal and may be subject to reduced application fees at the discretion of the Director.

b. Other Existing Uses. Existing establishments that currently sell alcoholic beverages for offsite consumption, and which are not seeking an expansion as described in this section shall be subject to the following restrictions:

i. The provisions of any active Conditional Use Permit for such an establishment that relate to the sale of alcohol for offsite consumption shall expire two years from the effective date of this section. At such time, the establishment shall cease all sales of alcoholic beverages and shall apply for an ABC CUP pursuant to the provisions of this section.]

SECTION 2: Section 15-2706-E is amended to read:

152706-E. Location Restrictions for New Establishments

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 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.

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. 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].

SECTION 3: Section 15-2706-Q is amended to read:

15-2706-Q. Additional Requirements

Q. 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. Displays of alcoholic beverages or freestanding advertising structures such as cardboard floor stands shall be prohibited within 10 feet of consumer entrance points and shall not be visible from the exterior of the establishment.]

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.

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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 _____, 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2015
Mayor Approval/No Return: _____, 2015
Mayor Veto: _____, 2015
Council Override Vote: _____, 2015

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

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

BY: _____
TALIA KOLLURI-BARBICK
Senior Deputy City Attorney

TKB:jd [69899jd/tkb] 12-10-15