RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, INITIATING A TEXT AMENDMENT TO THE ZONING ORDINANCE OF THE CITY OF FRESNO TO AMEND CHAPTER 15, ARTICLE 27, SECTION 15-2706 OF THE FRESNO MUNICIPAL CODE RELATING TO THE SALE OF ALCOHOLIC BEVERAGES FOR OFFSITE CONSUMPTION, AND TO FURTHER AMEND SECTION 15-2706 TO BE TITLED "THE RESPONSIBLE NEIGHBORHOOD MARKET ORDINANCE", PURSUANT TO FRESNO MUNICIPAL CODE SECTION 15-5803-A(1)

WHEREAS, on December 3, 2015, the Council of the City of Fresno, (Council) 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; Section 15-2700 et seq. of the Citywide Development Code sets forth standards for specific uses and activities that are permitted or conditionally permitted in some or all; and

WHEREAS, Fresno Municipal Code section 15-5803-A(1) authorizes the Council to initiate an amendment to the text of the Citywide Development Code by adopting a Resolution of Initiation; and

WHEREAS, the Council desires to amend section 15-2706 of the Citywide Development Code relating to the sale of alcoholic beverages for off-site consumption, and to amend the title of section 15-2706 so that it shall be knowns as "The Responsible Neighborhood Market Ordinance."

Date Adopted:
Date Approved:
Effective Date:
City Attorney Approval: _____

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

1. Pursuant to Fresno Municipal Code section 15-5803-A(1), the Council initiates the necessary proceedings to amend the text of Section 15-2706 of the City of Fresno's Zoning Ordinance relating to the sale of alcoholic beverages for offsite consumption.

2. The Council further directs staff to review and analyze the proposed draft (attached as Exhibit A), prepare any environmental assessment pursuant to the requirements of the California Environmental Quality Act (CEQA), bring the Text Amendment before the Airport Land Use Commission for consideration upon completion of environmental review, before the Planning Commission for consideration within thirty days of it being reviewed by the Airport Land Use Commission, and back before the Council for consideration within thirty days of the Planning Commission's review.

3. The Council further directs the City Attorney's Office to work with stakeholders to establish an inspection program for establishments selling alcohol for off-site consumption and to establish a fine structure for those establishments found to be out of compliance.

* * * * * * * * * * * * * * *

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 ___ day of _____, 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
CITY ATTORNEY'S OFFICE

BY: _____
Talia Kolluri Date
Supervising Deputy City Attorney

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, AND FURTHER AMENDING SECION 15-2706 TO BE TITLED "THE RESPONSIBLE NEIGHBORHOOD MARKET ORDINANCE"

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 [-THE RESPONSIBLE NEIGHBORHOOD MARKET ORDINANCE]

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 sell beer, malt liquor, wine coolers and similar alcoholic beverages to retailers unless they are packaged in original factory packaging of four packs or greater, subject to the following exception:

a. Craft beer which is originally packaged in a single 22 oz. bottle may be sold to a retailer in single bottle packaging, provided the product meets the following definition of "craft beer."

(1) Craft beer is defined as a beer or malt beverage manufactured by a brewer with an annual production of six million barrels of beer or less, where less than 25 percent of the craft brewery is owned or controlled by an alcohol industry member, and where a majority of total beverage alcohol volume is beer that derives flavor from traditional or innovative brewing ingredients and their fermentation.

2. Wholesalers shall not sell wine to retailers in containers of less than 750 milliliters.

3. Wholesalers shall not sell distilled spirits to retailers in containers of less than 375 milliliters.]

[C.] 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.~~[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 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. Subject to the exceptions stated below, an ABC CUP, and all the rights contained therein, shall expire five years from the issuance of a certificate of occupancy, or commencement of the use if no certificate of occupancy is required. 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.

(1) ABC CUP applications that are based on a license issued by the California Department of Alcoholic Beverage Control (CA ABC) to an individual, who has no previous or existing licenses in good standing from CA ABC, shall expire one year from the

issuance of a certificate of occupancy, or commencement of the use if no certificate of occupancy is required. Upon expiration, the applicant must apply for a new ABC CUP before continuing the sale of alcoholic beverages for off-site consumption.

(2) ABC CUP applications that are the first ABC CUP application submitted for the subject property shall expire one year from the issuance of a certificate of occupancy, or commencement of the use if no certificate of occupancy is required. Upon expiration, the applicant must apply for a new ABC CUP before continuing the sale of alcoholic beverages for off-site consumption.

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. Subject to the exceptions set forth below in section 15-2706-D(3)(b)(ii), the provisions of any active

Conditional Use Permit for such an establishment that relate to the sale of alcohol for offsite consumption shall expire according to the phased schedule set out below. Upon expiration, the establishment shall cease all sales of alcoholic beverages and shall apply for an ABC CUP pursuant to the provisions of this section. Existing establishments may continue any remaining activities authorized by a CUP that do not involve the sale of alcoholic beverages.

(1) The provisions of any active Conditional Use Permit, issued under C-949486 specifically related to the sale of alcohol for offsite consumption shall expire two years from the effective date of this section.

(2) The provisions of any active Conditional Use Permit, issued from 1995 through 2005 specifically related to the sale of alcohol for offsite consumption shall expire three years from the effective date of this section.

(3) The provisions of any active Conditional Use Permit, issued from 2006 through 2016 specifically related to the sale of alcohol for offsite

consumption shall expire four years from the effective date of this section.

ii. If, following the annual inspection described in section 15-2706-R(8) of this ordinance, the operator is found to be in compliance with all requirements of a CUP issued prior to the effective date of this ordinance, expiration of that CUP shall be stayed unless and until the operation is determined to be out of compliance following a subsequent inspection and the operator fails to come into compliance within 30 days of the determination.

iii. Notwithstanding the above, any operator that seeks to expand or improve an existing use operating pursuant to a CUP issued prior to the effective date of this ordinance, such that a new ABC CUP is required, or is required to obtain an ABC CUP due to expiration, shall be subject to all provisions of this ordinance with the following exceptions:

(1) The location restrictions for new establishments set forth in section 15-2706-F of this ordinance shall not apply.

(2) The ratio requirement set forth in section 15-2706-R(7) shall not apply.]

~~D~~[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.

~~E~~[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 not apply to existing establishments that seek renewal of an expired CUP or that seek to expand an existing use.

1. Near Sensitive Uses. The establishment shall not be located within ~~500~~ [1,000] 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.

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 shall provide a full-size grocery store or supermarket.].

~~F~~[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.

~~G~~[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.

~~H~~[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.

~~I~~[J]. Pay Phones and Vending Machines. External pay phones and snack vending machines are prohibited.

~~J~~[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.

~~K~~[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 ~~15~~ [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 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.

~~L~~[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.

~~M~~[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.

~~N~~[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.

~~O~~[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.

~~P~~[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 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.

~~Q~~[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. 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.

5. The Director shall deny issuance of an ABC CUP to a new establishment that seeks to transfer an existing ABC license in good standing to a location within the City of Fresno, when the ABC license is proposed to be transferred from a location outside the City of Fresno, or when the ABC license has been surrendered from any jurisdiction, including the City.

6. The Director shall deny issuance of an ABC CUP to a new establishment that seeks to acquire a new ABC license for the operation. Instead, applicants must transfer an ABC license in good standing from an existing establishment within the City of Fresno. ABC license transfer requirements are as follows:

a. New establishments with proposed retail square footage less than 10,000 square feet shall transfer two ABC licenses in good standing from within the Council District where the new establishment is proposed. The new establishment shall surrender one of the transferred ABC licenses to the California Department of Alcoholic Beverage Control.

b. New establishments with proposed retail square footage between 10,000 and 30,000 square feet shall transfer three ABC licenses in good standing from within the Council District where the new establishment is proposed. The new establishment

shall surrender two of the transferred ABC licenses to the California Department of Alcoholic Beverage Control.

c. New establishments with proposed retail square footage in excess of 30,000 square feet shall transfer four ABC licenses in good standing from any Council District within the City limits. The new establishment shall surrender three of the transferred ABC licenses to the California Department of Alcoholic Beverage Control. New establishments subject to this subsection are encouraged to transfer ABC licenses from areas identified as areas of overconcentration as determined by the California Department of Alcoholic Beverage Control.

7. The Director shall deny issuance of an ABC CUP to a new establishment if granting the ABC CUP would result in the number of sites selling alcohol for off-site consumption exceeding one license for every 2,500 residents.

8. Sites that have been issued an ABC CUP pursuant to this section shall be subject to annual inspections by the City to ensure compliance with this section and any additional conditions of the ABC CUP. If an annual inspection results in a finding that an operator is not in compliance with this section or the specific conditions of the ABC CUP, that finding may be used as a basis for revoking the ABC CUP or as a basis for denying renewal of an expiring ABC CUP.]

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 _____, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2019
Mayor Approval/No Return: _____, 2019
Mayor Veto: _____, 2019
Council Override Vote: _____, 2019

YVONNE SPENCE, CMC
City Clerk

BY:_____
Deputy

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

BY:_____
TALIA KOLLURI
Supervising Deputy City Attorney