

ORDINANCE NO. 1360 N.C. (2d)

AN ORDINANCE OF THE CITY OF VALLEJO AMENDING SECTION 2 (PART) OF ORDINANCE NO. 558 N.C. (2d), AS AMENDED, AND CHAPTER 16.04, DEFINITIONS AND CHAPTER 16.82, CONDITIONAL USE PERMIT PROCEDURES, OF THE VALLEJO MUNICIPAL CODE CONCERNING WHEN A USE PERMIT TO SELL ALCOHOL SHOULD BE GRANTED.

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

SECTION 1. Ordinance No. 558 N.C. (2d), as amended, and Chapter 16.04, DEFINITIONS, of the Vallejo Municipal Code is amended to add or amend the following definitions:

16.04.055 BONA FIDE EATING PLACE: a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation which has: 1) suitable kitchen facilities; 2) a primary use of sit down service to patrons; 3) adequate seating arrangements for patrons provided on the premises; 4) alcoholic beverages served for consumption on the premises only when served at tables or counters. A bona fide public eating place, which includes, but is not limited to, any facility which has obtained a State Department of Alcoholic Beverage Control license Type 41, On-Sale Beer and Wine Eating Place or Type 47, On-sale General Eating Place, does not include any billiard or pool hall, video arcade, bowling alley or adult entertainment business. (Adapted in part from the California ABC Control Act, Business and Professions Code, s 23038) and 5) a minimum of 67% (sixty seven percent) of the bona fide's eating place's gross receipts shall be from the sale of meals and other non-alcoholic products. The owner/operator shall submit at the time of city business license renewal certified evidence of total meal and other non-alcoholic products sales upon request by city officials, for the purpose of verifying compliance.

16.04.131 CONVENIENCE MARKET: a market serving neighborhood needs, of less than five thousand square feet in size, offering a broad selection of goods, but with less than twenty percent (20%) of the sales floor area devoted to the display of alcoholic beverages.

16.04.285 LIQUOR STORE: a specialty store where the predominant products sold, twenty percent or more (>20%) of the sales floor area, are alcoholic beverages, including beer and wine, and related items.

16.04.315 MARKET: a market serving neighborhood and community needs, greater than five thousand square feet in size, and offering a broad selection of goods, but with less than twenty percent (20%) of the sales floor area devoted to the display of alcoholic beverages.

SECTION 2. Ordinance No. 558 N.C. (2d), as amended, and Chapter 16.82, CONDITIONAL USE PERMIT PROCEDURE, of the Vallejo Municipal Code is amended to add the following:

16.82.060 Standards and criteria for certain conditionally permitted uses.

Whenever a use which is listed below requires a major or minor conditional use permit, the use permit application must demonstrate and the appropriate permit issuing authority shall certify that the use meets the following pertinent standards and criteria:

Q. On-Site Liquor Establishments shall comply with the following restrictions:

Subsections I through and including 9 - No Change.

10. All servers shall within ninety (90) days of employment, complete an approved course in "responsible beverage service training". The outlet shall within ten (10) days provide evidence of the employee's completion of this training to the Planning Division.

11. Whenever any of the situations identified in Section 16.82.140 occurs, a use permit issued for on-site alcohol sales in accordance with this chapter shall become null or void, and a new use permit shall be required prior to resuming the sale of alcoholic products.

12. All new on-site alcohol sales establishments, except bona fide eating establishments, shall be located at least one thousand (1,000) feet from all existing onsite and off-site alcohol sales outlets located on commercially zoned property, except that this separation shall not be measured from any establishment that is not normally available to the general public such as private clubs and lodges.

SECTION 3. Ordinance No. 558 N.C. (2d), as amended, and Chapter 16.82, CONDITIONAL USE PERMIT PROCEDURE, of the Vallejo Municipal Code is amended to add the following:

16.82.060 Standards and criteria for certain conditionally permitted uses.

Whenever a use which is listed below requires a major or minor conditional use permit, the use permit application must demonstrate and the appropriate permit issuing authority shall

certify that the use meets the following pertinent standards and criteria:

R. Off-Site Liquor Establishments shall comply with the following restrictions:

Subsections I through and including 12 - No Change.

13. All sales clerks in off-site outlets less than 5,000 feet in total area shall within ninety (90) days of employment, complete an approved course in "responsible beverage service training". The outlet shall within ten (10) days provide evidence of the employee's completion of this training to the Planning Division.

14. All off-site outlets which also sell motor vehicle fuels shall comply with the restrictions contained in Section 23790.5 of the Business and Professions Code, to wit:

- a. No beer or wine shall be displayed within five feet of the cash register or the front door unless it is in a permanently affixed cooler as of January 1, 1988;
- b. No advertisement of alcoholic beverages shall be displayed at motor fuel islands;
- c. No sale of alcoholic beverages shall be made from a drive-in window;
- d. No display of beer or wine shall be made from an ice tub;
- e. No beer or wine advertising shall be located on motor fuel islands, and no self-illuminated advertising for beer or wine shall be located on building or windows; and
- f. Employees on duty between 10:00 pm and 2:00 am who sell beer or wine shall be at least 21 years of age.

15. Whenever any of the situations identified in Section 16.82.140 occurs, a use permit issued for off-site alcohol sales in accordance with this chapter shall become null or void, and a new use permit shall be required prior to resuming the sale of alcoholic products.

16. All new off-site alcohol establishments, except retail establishments with a sales display area of at least eleven thousand (11,000) square feet, shall be located at least one thousand (1,000) feet from all existing on-site and off-site alcohol sales outlets located on commercially zoned land, except that this separation shall not be measured from from any establishment that is not normally available to the general public such as private clubs and lodges.

SECTION 4. Ordinance No. 558 N.C. (2d), as amended, and Chapter 16.82, CONDITIONAL USE PERMIT PROCEDURE, of the Vallejo Municipal Code is amended to add the following:

16.82.120 Additional grounds for revocation, suspension or modification.

Subsection A & B- no change.

C. In addition to the grounds stated in Section 16.82.110, the planning commission may suspend, revoke, or modify the use permit authorizing the sale of alcoholic beverages, pursuant to the procedures set out in this chapter, whenever the ABC suspends an outlet's license more than twice in a 12-month period. (In this case, the Planning Division and Police Department shall review the operation of the outlet and determine if a new use permit shall be required.)

SECTION 5. Ordinance No. 558 N.C. (2d), as amended, and Chapter 16.82, CONDITIONAL USE PERMIT PROCEDURE, of the Vallejo Municipal Code is amended to add the following:

16.82.140 New or amended use permit required.

A new or amended use permit shall be required prior to any of the following situations apply:

1. There is a change in type of license issued by the State of California Department of Alcoholic Beverage Control (ABC) ;
2. The floor area devoted to the display and/or sales of alcoholic beverages is to be expanded by more than 20 percent (this requirement does not include expansion of reception, eating, kitchen, service, or storage areas of onsite outlets or expansion of service, storage, or sales areas for items other than alcoholic beverages in off-site outlets);

SECTION 6. Ordinance No. 558 N.C. (2d), as amended, and Chapter 16.82, CONDITIONAL USE PERMIT PROCEDURE, of the Vallejo Municipal Code is amended to add the following:

16.82.150 Use permit abandoned.

A use permit, or portion of a use permit, authorizing the sale of alcoholic beverages shall be deemed to be abandoned if the sale of alcoholic beverages ceases for twelve consecutive months. A new use permit shall be secured prior to the resumption of the sale of alcoholic beverages.

SECTION 7. Effective Date. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage.

FIRST READ at a regular meeting of the Council of the City of Vallejo held the 16th day of April, 1996, and finally passed and adopted at a regular meeting of the Council held the 23rd day of April, 1996, by the following vote:

AYES: Mayor Exiine, Councilmembers Donahue, Hicks, Martin, Patchell, Stafford and Villanueva NOES: None ABSENT: None

GLORIA EXLINE~MAY/QR

ATTEST:

CTA9406A.ORD

ORDINANCE NO. 1318 N.C. (2d)

AN ORDINANCE AMENDING ORDINANCE NO. 558 N.C. (2d), AS AMENDED, ENTITLED THE LAND USE ZONING ORDINANCE OF THE CITY OF VALLEJO, CHAPTER 16.04, DEFINITIONS, AND CHAPTER 16.82, CONDITIONAL USE PERMIT PROCEDURE, OF THE VALLEJO MUNICIPAL CODE

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

Section 1. That Ordinance No. 558 N.C. (2d) and Chapter 16.04, Definitions, is amended by adding the following sections:

16.04.355 Off-Sale Liquor Establishment

"Off-Sale Liquor Establishment" shall mean any establishment which will be applying for a liquor license from the California Department of Alcoholic Beverage Control, including types: 20(Off-Sale - Beer and Wine), and 21 (Off-Sale - General) to sell alcoholic beverages which will not be consumed on the property on which the alcohol was sold.

16.04.356 On-Sale Liquor Establishment

"On-Sale Liquor Establishment" shall mean any establishment wherein alcoholic beverages are sold, served or given away for consumption on the premises including but not limited to any facility which will be applying for an Alcoholic Beverage Control license type 41 (On-Sale - Beer and Wine - Eating Place) type 42 (On-Sale - Beer and Wine), type 47 (On-Sale - General Restaurant), type 48 (On-Sale - General - Public Premises), type 51 (On-Sale - Club), type 52 (On-Sale - Veteran's Club), and type 63 (On-Sale - Beer and Wine - Hospital).

Section 2. That Ordinance No. 558 N.C. (2d) and Chapter 16.82, Conditional Use Permit Procedure, is amended as follows:

16.82.020 Application.

- A. No Change.
- B. No Change.
- C. In addition, all applicants for a conditional use permit to sell alcohol, including beer and wine, shall submit a completed questionnaire, of a form and content as proscribed by the Planning Commission and/or City Council. Said questionnaire shall be mailed along with the public hearing notice, and sent to the State of California Department of Alcoholic Beverage Control.

16.82.060 Standards and criteria for certain conditionally permitted uses.

Whenever a use which is listed below requires a major or minor conditional use permit, the use permit application must demonstrate and the appropriate permit issuing authority shall certify that the use meets the following pertinent standards and criteria:

A. *Amusement arcades* shall be subject to the following conditions:

1. An amusement arcade having five or more amusement machines shall not be allowed except by a major conditional use permit issued pursuant to Section 16.82.030 of this chapter.
2. An amusement arcade having less than five amusement machines shall not be allowed except by a minor conditional use permit issued pursuant to Section 16.82.040 of this chapter.
3. An amusement arcade shall be permitted only in the linear commercial and the pedestrian and freeway shopping and service districts.
4. No amusement arcade shall be allowed within one thousand feet of any elementary or junior high school unless the hours of operation are limited to after school.
5. An amusement arcade may be required to close at nine p.m. depending on the types of adjoining uses, its hours of operation and the type of uses proposed in conjunction with the arcade.
6. An amusement arcade with five or more machines may be required to have a security guard, who shall be armed, after seven p.m. and such additional adult supervision as required by the planning division and/or planning commission.
7. Any use which constitutes an amusement arcade on the date the ordinance codified in this section becomes effective shall comply with the provisions of this subsection within sixty days thereafter.
8. The fee for all permits for amusement arcades shall be waived for persons or businesses which have amusement machines on the effective date of the ordinance codified in this section and which apply for a permit within six months of the effective date of the ordinance codified in this section.

E. *Convenience markets* shall meet all of the following conditions:

1. The site shall be at least fifteen thousand square feet;
2. The site shall be located on a collector street;
3. Lighting and signs shall not adversely affect any residential area, traffic safety or crime deterrence;
4. No automobile repairing/dismantling shall be permitted in or adjacent to the site;

No outdoor storage shall be permitted; and

5. Architectural features shall be similar to or blend in aesthetically with structures in the neighborhood and vicinity.
6. Comply with the provisions of section R below relating to the sale of alcohol for off-site consumption.

N. *Parking areas which are accessory- to nonresidential uses and are located in residential zoning districts* must meet the following conditions:

1. The parking area must be located on or abut the site of the use being served;
2. The parking area must be directly across an alley from the use served; or
3. The parking area must serve an existing use with inadequate parking and may be located across a street.
4. Exterior lighting shall be high pressure sodium type, and shall have an illumination intensity of between 1 and 4 footcandles. Lights shall be directed and shielded so as not to glare onto adjoining residential properties. Lights shall have a housing to protect against breakage. Defective or removed lights shall be replaced within 48 business hours from the date of damage or removal.

O. *Automobile service stations and the sale of gasoline* shall meet all of the following standards in order to obtain a major use permit except that no major use permit may be granted authorizing this use in any residential district.

1. The use shall be located at the intersection of two major streets or a major and a collector street, or be part of a planned shopping center, freeway service complex, or other planned commercial concentration.
2. Where the use abuts or is across an alley from a residential zoning district, it shall comply with all the following standards:
 - a. A six-foot masonry wall shall be constructed along the property line which abuts the residential zoning district, or along the property line which is across the alley from said zoning district;
 - b. All site lighting and lighted signs shall be directed away or shielded from the residential zoning district;
 - c. The use shall comply with the front and side yard requirements which apply to the affected residential zoning district. All required yards shall be appropriately landscaped.
3. The use shall have a site area of at least fifteen thousand square feet when the use is not in conjunction with a planned complex.

Section 3. That Ordinance No. 558 N.C. (2d) and Chapter 16.82, Conditional Use Permit Procedure, is amended by adding the following sections:

- Q. *On-Sale Liquor Establishments* shall comply with the following restrictions:
1. Shall be permitted only after securing a major use permit, as prescribed in Chapter 16.82.
 2. If adjacent to residential uses, shall have a soundwall at least 6 feet in height, to buffer the adjacent residential uses. The soundwall shall not be built to obstruct the view of the building and parking areas from the street. Vegetation shall be planted along the soundwall and be of the type that will provide covering of the fence surface within two years.
 3. Exterior lighting should be high pressure sodium, or equivalent type, and shall have an illumination intensity of between 1 and 4 footcandles. Lights shall be directed and shielded so as not to glare onto adjoining residential properties. Lights shall have a housing to protect against breakage. Broken or burnt out lights shall be replaced within 120 business hours.
 4. Shall not sell alcohol for off-site consumption.
 5. No exterior vegetation shall be planted that is susceptible to use as a hiding place for persons on the premises.
 6. All graffiti shall be removed from the walls, fences, and or buildings within 120 hours of its appearance on the property. If the property is controlled by a "management company", then the tenant shall, within two days, notify the company by "certified mail", of the graffiti.
 7. Establish and maintain a "Complaint Response/Community Relations" program which includes the following:
 - a. Coordinate with the local community division of the Vallejo Police Department regarding appropriate monitoring of community complaints concerning activities associated with the subject facility.
 - b. A local phone number for the area commander of the local police substation in the geographical area where the establishment is located for the receipt of complaints from the community regarding the subject facility and the main Vallejo Police Department phone number shall be posted at the entry or at the reception desk.
 - c. A representative of the subject facility should voluntarily meet with representatives of the neighbors and/or neighborhood association, at their request, to resolve neighborhood complaints regarding the establishment.

8. Sign and advertising
 - a. The following signs shall be prominently posted in English, Spanish, and the predominant language of the facilities' clientele:
 1. A sign shall be prominently posted within any subject establishment, and outside so as to be seen by anyone entering the establishment, stating that "California State Law prohibits the sale of alcoholic beverages to persons under 21 years of age". (A notice shall also be placed on all menus " .)
 2. "No Loitering or Public Drinking" signs shall be posted in the alcohol beverage display areas in a readily visible manner.
9. A copy of the conditions of approval of the Conditional Use Permit must be kept on the premises of the establishment and presented to any police officer or any authorized city official upon request.

R. *Off-Sale Liquor Establishments* shall comply with the following restrictions:

1. Shall be permitted only after securing a major use permit, as prescribed in Chapter 16.82.
2. In or adjacent to residential uses, shall have a soundwall at least 6 feet in height, to buffer the adjacent residential uses. The soundwall shall not be built to obstruct the view of the building and parking areas from the street. Vegetation shall be planted along the soundwall and be of the type that will provide covering of the fence surface within two years.
3. All graffiti shall be removed from the walls, fences, and/or buildings within 120 hours of its appearance on the property.
4. Exterior lighting should be high pressure sodium, or equivalent type, and shall have an illumination intensity of between 1 and 4 footcandles. Lights shall be directed and shielded so as not to glare onto adjoining residential properties. Lights shall have a housing to protect against breakage. Broken or burnt out lights shall be replaced within 120 hours.
5. Trash receptacles, 60 gallons or less in size, shall be located at convenient locations outside the establishment, and the operators of the business shall remove all trash on a daily basis.
6. The sale of alcoholic beverages for on-site consumption shall be prohibited.
7. Pay telephones on the site of the establishment must be of the type that only allows outgoing calls.
8. In establishments with glass storefronts, windows shall allow for unobstructed interior viewing of the cash register area from the street.

9. Establish and maintain a "Complaint Response/Community Relations" program which includes the following:
 - a. Monitoring of complaints. The applicant shall:
 1. Post at the entry, the reception desk, and provide to the immediate neighbors and the local neighborhood association, if any, the local phone number for the area commander of the local police substation in the geographical area. The phone number posted shall be one which is answered during normal business hours (8 am.- 5 pm., Monday through Friday).
 2. Coordinate with the local community division of the Vallejo Police Department regarding appropriate monitoring of community complaints concerning activities associated with the subject facility.
 - b. A representative of the subject facility should voluntarily meet with representative of the neighbors and/or neighborhood association, at their request, to resolve neighborhood complaints regarding the establishment.
10. Sign and advertising - the following signs shall be prominently posted in English, Spanish, and the predominant language of the facilities' clientele:
 - a. "California State Law prohibits the sale of alcoholic beverages to persons under 21 years of age". (A notice shall also be placed on all menus).
 - b. "No Loitering or Public Drinking" signs shall be posted in the alcohol beverage display areas in a readily visible manner.
 - c. Signs, noting that it is illegal to consume alcoholic beverages in public parks, except in designated areas where the consumption of alcoholic beverages is permitted.
 - d. Signs, noting that it is illegal to possess an open container of alcohol in the vicinity of the selling establishment.
11. A copy of the conditions of approval of the Conditional Use Permit must be kept on the premises of the establishment and presented to any police officer or any authorized city official upon request.
12. Applicant shall operate subject facility in a manner appropriate with mitigating alcohol-related problems, including, but not limited to: sales to minors, the congregation of individuals, violence on-site, drunkenness, public urination, solicitation, and litter, which negatively impact those individuals living or working in the neighborhood.

Section 5. SEVERABILITY.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons or places. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, subdivision, sentence, clause, phrases, or portion, or the application thereof to any person or place, be declared invalid or unconstitutional.

Section 6. EFFECTIVE DATE.

This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final adoption.

FIRST READ at a regular meeting of the Council of the City of Vallejo held the 15th day of November, 1994, and finally passed and adopted at a regular meeting of the Council held the '29th day of November, 1994, by the following vote:

AYES: Mayor Intintoli, Councilmembers Boschee, Exiine, Hicks,
Higgins, Patchell and Villanueva
NOES: None
ABSENT: None

/s/Anthony J. Intintoli, Jr.
ANTHONY J. INTINTOLI, JR., MAYOR

ATTEST: /s/Allison Villarante
ALLISON VILLARANTE, CITY CLERK

ORDINANCE NO. 1399 N.C. (2d)

AN ORDINANCE OF THE CITY OF VALLEJO AMENDING SECTION 2 (PART) OF ORDINANCE NO. 558 N.C. (2d), AS AMENDED, OF THE VALLEJO MUNICIPAL CODE TO REPLACE ALCOHOLIC BEVERAGES WITH "DEEMED APPROVED" STATUS, AND TO ADOPT REGULATIONS PERTAINING TO PERFORMANCE STANDARDS AND ABATEMENT PROCEDURES.

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

Section 1. Chapter 16.04 Definitions, is hereby amended by adding the following:

16.04.115 Alcoholic beverage.

"Alcoholic beverage" means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine or beer, which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances, and sales of which requires a State of California Department of Alcoholic Beverage Control license.

Section 2. Chapter 16.04 Definitions, Section 335 Nonconforming Use is hereby amended as follows:

16.04.335 Nonconforming use.

"Nonconforming use" means a use of a building, structure, or site, or portion thereof, or a building, structure or facility itself, which was lawfully established, and maintained, erected or altered but which, because of the application of this title to it, no longer conforms to the specific regulations applicable to it. Provided however, that this term shall not apply to any use involving the sale of alcoholic beverages (see also "Deemed Approved Use").

Section 3. Chapter 16.04 Definitions, is hereby amended by adding the following:

16.04.138 Deemed Approved Use.

"Deemed Approved Use" means a business or entity which uses a building, structure, or site, or portion thereof, for the sale of alcoholic beverages, which was lawfully

established and maintained (not terminated for a period of twelve (12) continuous months), but which no longer conforms to the relevant provisions of this title. Furthermore a "Deemed Approved Use" shall no longer be considered a "Nonconforming Use".

Section 4. Chapter 16.78 Non Conforming Use Regulations, is hereby amended as follows:

Chapter 16.78

**NONCONFORMING USE AND DEEMED APPROVED
ALCOHOLIC BEVERAGE SALE REGULATIONS**

Sections:

Part I Nonconforming Use Regulations

- 16.78.010 Title and purpose.
- 16.78.020 Right to continue a nonconformity.
- 16.78.030 Effect of rezoning or annexation.
- 16.78.040 Nonconforming useXAbandonment.
- 16.78.050 Damaged or destroyed nonconforming usesXExceptions thereto.
- 16.78.060 Nonconforming useXRepairs and alterations of structures.
- 16.78.070 Nonconforming useXExpansion.
- 16.78.080 Nonconforming useXPermitted substitutions.
- 16.78.090 Nonconforming useXConversion to permitted use.

Part II Deemed Approved Alcoholic Beverage Sale Regulations

- 16.78.110 Deemed Approved Regulations - Title and purpose.
- 16.78.120 Automatic Deemed Approved Status.
- 16.78.130 Deemed Approved UseXAbandonment.
- 16.78.140 Notification to Owners of Deemed Approved Uses.
- 16.78.150 Deemed Approved Use - Performance standards.
- 16.78.160 Procedures for enforcement of performance standards.
- 16.78.170 Procedures for conduct of hearing and appeals.
- 16.78.180 Fees.
- 16.78.190 Illegal Use.

Part I NONCONFORMING USE REGULATIONS

16.78.010 Title and purpose.

The provisions of Sections 16.78.010 through 16.78.090, inclusive, shall be known as the nonconforming use regulations. The purpose of these regulations is to control, ameliorate, or terminate uses which do not conform to this title. These regulations shall apply to all nonconforming uses, except that nonconforming off-premises signs shall be subject to regulations described in Chapter 16.64. (Ord. 742 N.C.(2d) 3 27, 1984: Ord. 675 N.C.(2d) 3 1 (part), 1982.)

16.78.020 Right to continue a nonconformity.

A Nonconforming Use, as defined in Section 16.04.335, which is in existence or under construction on the effective date of the zoning ordinance codified in this title or of any subsequent rezoning or other amendment thereto which creates such use nonconformity, may be continued and maintained, except as otherwise specified in these nonconformity use regulations. None of the provisions of the nonconforming use regulations restrict any authority to require modification or termination of any nonconforming use which has been declared to be a nuisance by the City Council. (Ord. 675 N.C.(2d) 3 1 (part), 1982.)

Sections 16.78.030 through and including .090 - no change.

Section 5. Chapter 16.78 Non Conforming Use Regulations, is hereby amended by adding the following:

Part II DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS

16.78.110 Deemed Approved Regulations - Title and purpose.

The provisions of Section 16.78.110 through 16.78.190 inclusive, shall be known as the Deemed Approved Alcoholic Beverage Sale Regulations. The purpose of these regulations is to promote the public health, safety and general welfare by requiring that businesses which sell alcoholic beverages and were nonconforming uses before the adoption of these regulations comply with the Deemed Approved Performance

Standards as specified in section 16.78.150 and to achieve the following objectives:

- A. To protect adjacent neighborhoods from the harmful effects attributable to the sale of alcoholic beverages.
- B. To provide opportunities for businesses which sell alcoholic beverages to operate in a mutually beneficial relationship to each other and to other commercial and civic services.
- C. 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.
- D. To ensure that businesses which sell alcoholic beverages are not the source of undue public nuisances in the community.
- E. To 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.
- F. To monitor Deemed Approved Uses to ensure that they do not substantially change their mode or character of operation.

16.78.120 Automatic deemed approved status.

All businesses engaged in the sale of alcoholic beverages, including bona fide eating places, that were Nonconforming Uses prior to August 25, 1998 shall automatically become Deemed Approved Uses and shall no longer be considered Nonconforming Uses. Each such Deemed Approved Use shall retain this status as long as it complies with the Deemed Approved Performance Standards as specified in Section 16.78.150. None of the provisions of this chapter restrict any authority to require modification or termination of any Deemed Approved Use which does not conform to the provisions of Section 16.78.150 or which has been declared to be a nuisance by the City Council.

16.78.130 Deemed Approved Use X Abandonment.

Whenever a Deemed Approved Use discontinues active operation for a continuous period of twelve months, such Deemed Approved Use shall not be resumed. Related structures may be utilized thereafter only for a permitted use. Furthermore, if another use has been substituted before the lapsing of twelve months, the original Deemed Approved Use may not be resumed thereafter.

16.78.140 Notification to owners of Deemed Approved Uses.

The Planning Manager shall notify the owner of each Deemed Approved Use, and also the property owner if not the same, of the use's Deemed Approved status. Such notice shall be sent via certified return receipt mail; shall include a copy of the performance standards as specified in Section 16.78.150, with the requirement that these be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review; notification that the use is required to comply with all these performance standards; that a review fee is required, the amount of such fee shall be as established or amended by the City Council; and that the use 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 section shall not affect the Deemed Approved status of the use.

16.78.150 Deemed Approved Uses - Performance standards.

An activity shall retain its deemed approved status only if it conforms with all of the following "Deemed Approved Performance Standards":

- A. It does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.
- B. It does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area.
- C. 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. It does not result in violations to any applicable provision of any other city, county, state, or federal regulation, ordinance, or statute.
- E. Its upkeep and operating characteristics are compatible with and will not adversely affect the liveability or appropriate development of abutting properties and the surrounding area.
- F. A copy of the performance standards shall be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review.

16.78.160 Procedure for enforcement of performance standards.

Upon receiving a complaint from the public, Police Department, or any other interested person that a Deemed Approved Use is in violation of the performance standards as specified in Section 16.78.150, the following procedure shall be followed:

- A. A three member Complaint Response Team, led by a representative of the Development Services Department, and also consisting of a Police Department Beat Health Officer, and a member of the Vallejo Alcohol Policy Coalition (VAPC), or in place of a member of VAPC, any other person or entity designated by the City Council, will assess the nature of the complaint and its validity. Each team member's role, vis-a-vis the complaint and subsequent investigation, will be developed to correspond to the area of authority and/or expertise. For example, the representative of the Development Services Department will investigate the alleged land use and/or code violations, the Police Department Beat Health Officer will investigate any alleged criminal violations, and the VAPC representative or other designated member will talk

to members of the surrounding community to assess their perception of the alleged violation.

- B. There shall also exist an Alcohol Outlet Advisory Board, which shall consist of at least two owners and/or operators of businesses which sell alcoholic products. This Advisory Board shall meet with the Police Department Beat Health representative quarterly, or more often if needed, to review complaints relating to alcohol outlets, and to make recommendations on how to reduce/eliminate problems in or around alcohol outlets. The Advisory Board may also make recommendations relating to any changes to the Vallejo Municipal Code governing the operation of alcohol outlets.
- C. Based upon the findings of the Complaint Response Team, and recommendations from the Alcohol Outlet Advisory Board, recommendations to ameliorate any problems discovered will be made to the Deemed Approved Use. After an appropriate period of time (e.g. 2-3 weeks) the Team will revisit the site and surrounding community to determine if the violations have been abated.
 - 1. If the problems have been abated, then a subsequent visit by the Team may be made 30-60 days after the last visit to establish that the Deemed Approved Use remains in compliance.
 - 2. If the problems persist or the owner or operator of the business fails to cooperate with or respond to the Complaint Response Team, the Team will forward all materials to the Administrative Hearing Officer (AHO) to determine whether the Deemed Approved Use status of the business should be modified or revoked.
- D. Once it is determined by the City that violations appear to be occurring, then the AHO shall review the Deemed Approved Status of the Deemed Approved Use in question at a public hearing using the procedures specified in Section 16.78.170.

16.78.170 Procedures for conduct of hearings and appeals.

16.78.171 General

- A. Administrative Hearing Officers - The City Manager may appoint one or more Administrative Hearing Officers to conduct the hearings. The AHO hearing the case shall exercise all powers relating to the conduct of hearings unless/until the decision of the Administrative Hearing Officer is appealed to the Planning Commission and/or the City Council.
- B. Record - A record of the entire proceedings shall be made by tape recording, or by other means of permanent recording determined to be appropriate by the City Manager.
- C. Reporting - The proceedings at the hearing shall also be reported by a court reporter if requested by any party hereto at their expense. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the City Council, but shall in no event be greater than the cost involved.
- D. Continuances - The AHO, Planning Commission, and the City Council may grant continuances for good cause shown.
- E. Oaths/Certification - In any proceedings under this chapter, the AHO, the Chairperson of the Planning Commission, the Mayor, the City Clerk, or the City Attorney (or his/her designee), has the power to administer oaths and affirmations and to certify to official acts.
- F. Reasonable Dispatch - The AHO, the Planning Commission, and the City Council shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.
- G. Party or Parties Defined - For the purposes of Vallejo Municipal Code Section 16.78.170, the term party or parties refers to the City of Vallejo, the owner of the Deemed Approved Use, and also the property owner if not the same.

16.78.172 Notice.

At least twenty-one days before the public hearing, the Planning Manager shall notify the owner of the Deemed Approved Use, and also the property owner if not the same, of the time and place of the public hearing. **Notice may be accomplished** by personal service or sent via certified return receipt mail or by posting the property in a conspicuous place and mailing a copy thereof by first class mail, and shall include notification that the status of the business as a Deemed Approved Use will be considered for modification or revocation by the Administrative Hearing Officer. In addition, the public hearing shall be noticed in accordance with the notice provisions set forth in Vallejo Municipal Code Section 16.82.030. Failure of any person or party to receive notice given pursuant to this section shall not affect the validity of any proceedings hereunder. Fees for notification shall be set by resolution of the City Council and shall be paid for by the owner of the Deemed Approved Use.

16.78.173 Form of notice of hearing.

The notice to the owner of the Deemed Approved Use, and also the property owner if not the same, shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before the (name of the Administrative Hearing Officer, Planning Commission, or City Council, as appropriate) on the _____ day of _____, _____, at the hour _____ to determine whether the Deemed Approved Use status of the business operated at _____ shall be modified or revoked pursuant to the Deemed Approved Alcoholic Beverage Sale Regulations contained in Chapter 16.78 of the Vallejo Municipal Code. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the production of books, documents or other things or subpoena witnesses, at your expense, by filing an affidavit therefor in the Planning Division for the hearing officer (name of

the hearing officer, the Planning Division, or the City Clerk, as appropriate).

(A brief statement of the reason(s) for the hearing shall be included with the notice.)

16.78.174 Conduct of hearings.

- A. Rules - Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
- B. Oral Evidence - Oral evidence shall be taken only on oath or affirmation.
- C. Hearsay Evidence - Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
- D. Admissibility of Evidence - Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdictions in this state.
- E. Exclusion of Evidence - Irrelevant and unduly repetitious evidence shall be excluded.
- F. Rights of Parties - Each party shall have these rights, among others:
 - 1. To call and examine witnesses on any matter relevant to the issues of the hearing;
 - 2. To introduce documentary and physical evidence;
 - 3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

4. To impeach any witness regardless of which party first called the witness to testify;
5. To rebut the evidence;
6. To be represented by anyone who is lawfully permitted to do so.

G. Official Notice.

1. What may be noticed. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the departments and ordinances of the city.
2. Parties to be noticed. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.
3. Opportunity to refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the AHO, Planning Commission, or the City Council.
4. Inspection of the premises. The AHO may inspect any building or premises involved in the appeal during the course of the hearing, provided that (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given an opportunity to be present during the inspection, and (iii) the AHO shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the AHO.

H. Subpoenas.

1. Filing of Affidavit - Upon a showing of good cause by a party, the AHO may issue a subpoena for the attendance of witnesses or the production of other evidence at the hearing. The issuance of such subpoena shall be obtained upon the filing by a party of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his possession or under his control. A subpoena need not be issued when the affidavit fails to show good cause or when the affidavit is defective in any particular.
2. All expenses associated with the issuance of the subpoena, including, but not limited to, the cost of service and witness fees, as set forth by State law, shall be the responsibility of the party requesting and obtaining the issuance of the subpoena.
3. Penalties - Any person who refuses without lawful excuse to attend any hearing, or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided herein shall be guilty of a misdemeanor.

16.78.175 Purpose of the public hearing before the Administrative Hearing Officer.

- A. The purpose of the public hearing before the AHO is to receive testimony on whether the operating methods of the Deemed Approved Use are causing undue negative impacts in the surrounding area.
- B. At the public hearing, the AHO shall determine whether the Deemed Approved Use conforms to the performance standards as specified in Section 16.78.150, and to any other applicable criteria.
- C. The AHO may continue the Deemed Approved status for the Use in question, may require such changes or impose such reasonable conditions of approval as are in the judgement of the Administrative Hearing Officer necessary to ensure conformity to said criteria, or may revoke the Deemed

Approved Use's Deemed Approved Status. If new conditions are being imposed, such conditions shall be based upon the evidence before the Administrative Hearing Officer.

- D. The decision of the AHO shall be based upon all evidence received at the hearing, including, but not limited to, information compiled by staff and testimony from the owner of the Deemed Approved Use and all other interested persons. The new conditions of approval shall be made a part of the Deemed Approved Status and the Deemed Approved Use shall be required to comply with these conditions.

16.78.176 Method and form of decision of the Administrative Hearing Officer.

- A. The AHO shall within a reasonable time (not to exceed thirty (30) days from the date the hearing is closed) submit to the Planning Manager a written decision containing a brief summary of the evidence considered and the officer's findings and conclusions, including any operational conditions that are being place on the Deemed Approve Use. The AHO's written decision shall be a matter of public record. A copy of the decision shall be served on each party by personal service or by certified return receipt mail. Service of the decision shall be deemed complete at the time it is personally served or deposited in the mail with the correct amount of postage affixed. Failure to receive a copy of the decision served pursuant to this section shall not affect the validity of the decision.
- B. Effective date of decision - The decision of the Administrative Hearing Officer shall become final ten (10) days after the service of the decision is deemed complete pursuant to Subsection A above unless appealed to the Planning Commission in accordance with Section 16.78.178.

16.78.177 Procedure for consideration of violations to conditions of approval.

- A. In the event of a failure to comply with any prescribed Condition of Approval imposed by the AHO as provided in

Section 16.78.174 of these regulations, the AHO may hold another public hearing. Notification of this hearing shall be in accordance with Sections 16.78.172 and 16.78.173.

- B. The purpose of this hearing is to receive testimony and determine whether violations to any Conditions of Approval attached to the Deemed Approved Use have occurred. The hearing shall be conducted as provided in Section 16.78.174. The Officer may add to or amend the existing Conditions of Approval based upon the evidence presented; or alternatively may revoke the Deemed Approved Use's Deemed Approved status. The provisions of Section 16.78.176 A, concerning the AHO's written decision, shall be followed.
- C. The decision of the Administrative Hearing Officer shall become final in the same manner as provided for in Section 16.78.176 B.

16.78.178 Appeal to Planning Commission.

- A. If a timely appeal of the decision of the AHO is filed with the Secretary of the Planning Commission, the Planning Manager shall agendize the appeal and send notice of the public hearing to all parties, owners of property within 500 feet of the business location, all homeowners associations within 1,000 of the business location, and to the Planning Commission at least 14 days before the date of the hearing. Notice to parties shall be delivered personally or sent by certified return receipt mail. Service on parties shall be deemed complete at the time said notice is personally served or deposited in the mail with the correct amount of postage affixed. Failure to receive notice given pursuant to this section shall not affect the validity of any appeal hearing hereunder.
- B. The Planning Manager shall forward a copy of the record of the public hearing before the AHO, the written decision of the AHO, the appeal letter, and all other pertinent information for consideration by the Planning Commission.

- C. Such appeal shall be in writing and shall state specifically wherein it is claimed there was an error or abuse of discretion by the Administrative Hearing Officer or wherein his/her decision is not supported by evidence in the record. The appeal shall be accompanied by such information as may be required to facilitate review.
- D. In considering the appeal, the Planning Commission shall determine whether the Deemed Approve Use conforms to the applicable Deemed Approved Standards and/or any Conditions of Approval, and may continue or revoke a Deemed Approved Use; or require such changes in the existing use or impose such reasonable Conditions of Approval as are, in its judgment, necessary to ensure conformity to said Deemed Approved standards.
- E. Form of decision - The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be served on the parties by personal service or by certified return receipt mail. Service of the decision shall be deemed complete at the time it is personally served or deposited in the mail with the correct amount of postage affixed. Failure to receive a copy of the decision served pursuant to this section shall not affect the validity of the decision rendered herein.
- F. The decision of the Planning Commission shall be final unless appealed to the City Council in accordance with Section 16.78.179.

16.78.179 Appeal on the revocation of Deemed Approved Status to the City Council.

- A. Within ten calendar days after the date a decision is rendered by the Planning Commission to revoke a Deemed Approved Use, an appeal may be taken to the City Council by any party.
- B. If a timely appeal of the decision of the Planning Commission to revoke a Deemed Approved Use is filed with the City Clerk, the appeal shall be agendized and notice of the public hearing shall be sent to all parties, owners of property within 500 feet of the

business location, all homeowners associations within 1,000 of the business location, and to the Planning Commission at least 14 days before the date of the hearing. Notice to parties shall be delivered personally or sent by certified return receipt mail with the correct amount of postage affixed. Failure to receive notice given pursuant to this section shall not affect the validity of any appeal hearing hereunder.

- C. The City Clerk shall forward a copy of the record and written decision of the AHO, a copy of the record and findings of the Planning Commission, the appeal letter, and all other pertinent information for consideration by the City Council.
- D. The appeal shall be set forth in writing and state specifically wherein it is claimed there was an error or abuse of discretion by the Planning Commission or wherein its decision is not supported by the evidence in the record.
- E. In considering the appeal, the Council shall determine whether the Deemed Approved Use conforms to the applicable Deemed Approved Standards, and may approve or disapprove the revocation or require such changes therein or impose such reasonable Conditions of Approval as are in its judgment necessary to ensure conformity to said Standards.
- F. Form of decision - The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be served on the parties by personal service or by certified return receipt mail. Service of the decision shall be deemed complete at the time it is personally served or deposited in the mail with the correct amount of postage affixed. Failure to receive a copy of the decision served pursuant to this section shall not affect the validity of the decision rendered herein.
- G. The decision of the City Council shall be final unless overruled by a court of competent jurisdiction.

16.78.180 Fees.

The City Council does hereby establish the following fees in order to carry out the purpose and intent of this chapter.

- A. All existing alcohol outlets (Licensee) shall be required to pay a one time fee of three hundred dollars (\$300) for which they will receive education about the Deemed Approved Ordinance and an inspection by the Complaint Response Team to help the businesses assess the degree to which they are in compliance with the Performance Standards contained in the ordinance. However, this fee will be waived for existing businesses which submit a copy of their report to the Department of Alcoholic Beverage Control documenting that they sold/served less than one thousand dollars (\$1,000) worth of a alcohol during the preceding twelve (12) month period.
- B. All new outlets, or outlets (Licensee) changing ownership after the enactment of the Deemed Approved Ordinance, will be required to pay a one time fee of three hundred dollars (\$300) for the education and inspection services described above.
- C. Fines of five hundred dollars (\$500), one thousand dollars (\$1,000), and five thousand dollars (\$5,000) for the first, second and third offenses respectively, will be levied (per the process outlined in the Ordinance) upon outlets determined to be out of compliance with the Performance Standards. These fines shall be part of the Administrative Citation process.
- D. There will be no additional fees assessed to merchants other than those discussed above.
- E. Failure of any person to pay a fee as specified above, within 30 days of receipt of the bill, which shall be sent by regular U. S. Mail, shall constitute a debt to the City. To enforce that debt, the City Manager, or his/her designee, may file a claim with the Small Claims Court, or direct the City Attorney to employ other available legal remedies.

16.78.190 Illegal Use.

A Use which has been finally determined to be in noncompliance with the Deemed Approved Performance Standards

HOME DELIVERY OF ALCOHOLIC BEVERAGES ORDINANCE

1. The first proposed ordinance bans all delivery of alcoholic beverages to a residential address.
2. The second proposed ordinance regulates home delivery by requiring that the person making the delivery record specific information that must be maintained on the premises of the licensed liquor establishment for one year.

The second ordinance is based on Chapter 7517.0580 of Rules of the Minnesota Department of Public Safety Liquor Control Division and Bloomington, MN Ordinance §16.15(e).

Proposed Ordinance

HOME DELIVERY OF ALCOHOLIC BEVERAGES

[TOTAL BAN]

Section 1. Prohibition.

No licensee authorized under [insert citation to liquor license ordinances] shall deliver any alcoholic beverage to a residential address.

Section 2. Penalties.

The penalties for violation of this ordinance shall be as follows:

1. for the first violation, a fine not exceeding fifty dollars (\$50).
2. for the subsequent violation, a fine not less than one hundred dollars (\$100) but not exceeding seven hundred dollars (\$700), and/or suspension of license(s) granted under [insert citation to on-sale liquor license ordinance] for ten (10) days.

This ordinance shall take effect immediately.

OR

[REGULATORY APPROACH]

Section 1. Prohibition.

No off-sale establishment licensed under [insert citation to municipal off-sale liquor license ordinances] shall deliver or permit any employee to deliver any alcoholic beverages without:

1. Determining that the person receiving such beverage is of legal age to purchase and consume alcoholic beverages under MS §340A.503; and
2. Obtaining an invoice signed by the person receiving such beverage. The invoice shall state the names and addresses of the seller and person receiving the delivery, the quantity and brand of the beverage delivered, and the time, date, and place of delivery. The invoice shall be kept by the off-sale licensee for a period of one (1) year and shall be made available for inspection by the license issuing authority and the City Police Department.

Section 2: Times and Amount of Delivery.

No off-sale licensee under [insert citation to municipal off-sale liquor license ordinances] shall deliver or permit any employee to deliver to a residential address:

1. between 6:00 p.m. and 8:00 a.m.; and
2. more than [amount].

Section 3. Penalties.

The penalties for violation of this ordinance shall be as follows:

1. for the first violation, a fine not exceeding fifty dollars (\$50),
2. for the subsequent violation, a fine not less than one hundred dollars (\$100) but not exceeding seven hundred dollars (\$700), or suspension of license(s) granted under [*insert citation to municipal off-sale liquor license ordinances*] for ten (10) days, or both.

This ordinance shall take effect immediately.

Chapter 126: FOOD-HANDLING AND DRINKING ESTABLISHMENTS

[HISTORY: Adopted by the City Council of the City of Pottsville as indicated in article histories. Amendments noted where applicable.]

ARTICLE I General Provisions [Adopted 5-21-1966 by Ord. No. 72-66 as Art. 1109 of the 1966 Code]

§ 126-1. Word usage and definitions.

- A. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
- B. Unless otherwise herein expressly stated, the following terms, phrases, words and their derivations shall have the meanings given herein as follows:

BARTENDER/SERVER — An employee of a licensed food establishment who tends bar or otherwise serves alcohol 12 or more hours per week. [Added 9-11-2000 by Ord. No. 635]

EMPLOYEE — Any cook, waiter, kitchen help, house servant or other employee of any kind in a public eating or drinking place who in any manner whatever handles or comes in contact with food or drink served to or provided for the public, and includes the proprietor or any member of the proprietor's family handling any food or drink.

HEALTH OFFICER — The Health Officer of the city acting for the Department of Public Safety.

LICENSE — A grant to a licensee to conduct a public eating or drinking place, as defined in this section.

PREMISES — Includes all land, structures and places and also the equipment and appurtenances connected or used therewith in any public eating or drinking place, as herein defined, and also any personal property which is either affixed to or is otherwise used in connection with any such business conducted on such premises.

PROPRIETOR — Any person, partnership, association or corporation conducting or operating a public eating or drinking place within the city.

PUBLIC EATING OR DRINKING PLACE — Any place within the city where food or drink is served to or provided for the public, with or without charge.

§ 126-2. License required.

No proprietor shall conduct or operate a public eating or drinking place without first obtaining a license as herein provided. Such license shall be issued by the Health Officer. No license shall be issued until inspection of the premises, facilities and equipment has been made by the Health Officer and they are found adequate for the protection of the public health and comfort of patrons.

§ 126-3. License and inspection fee. [Amended 4-10-1979 by Ord. No. 254; 12-30-1982 by Ord. No. 313]

Every proprietor of a public eating or drinking place shall pay an annual license and inspection fee of \$25. No license shall be issued or reissued until such fee is paid.

§ 126-4. Duplicate licenses; fee.

Whenever any proprietor maintains more than one public eating or drinking place within the city, he shall be required to apply for and procure a duplicate license for each additional eating or drinking place, such duplicate license to be issued at an additional inspection fee of \$5.

§ 126-5. License application.

Any person owning or operating or desiring to operate a public eating or drinking place or public eating and drinking places within the city shall make application for a license on forms furnished by the Health Officer. Such forms shall set forth such information as the Health Officer may require, including the name and address of the applicant, together with all other information deemed necessary.

§ 126-6. Inspection.

Before granting a license hereunder, the Health Officer shall visit and inspect the premises on which the applicant conducts or proposes to conduct his business. The Health Officer may refuse to issue a license if the premises on which the applicant conducts or proposes to conduct his business or his equipment does not meet the requirements of this article or the rules and regulations of the Health Officer. The Health Officer shall state, in writing, to the applicant the reason for such refusal.

§ 126-7. License term; renewal.

Licenses shall be granted for a period of one year from the date of issue. Application for renewal shall be made one month before the expiration of the existing license. A license granted under the provisions of this article shall be renewed if, upon inspection by the Health Officer, the conditions specified in § 126-6 with respect to the premises and equipment are fulfilled.

§ 126-8. License contents; display; nontransferability.

Licenses shall specify the date of issuance, the period which is covered, the name of the licensee and the period covered. Such licenses shall be conspicuously displayed at all times in the place thereby licensed. Licenses shall not be transferable.

§ 126-9. Health Officer to make rules and regulations.

The Health Officer may make such reasonable rules and regulations as may be deemed necessary for carrying out the provisions and intent of this article.

§ 126-10. No exemption from license requirement. [Amended 12-12-1994 by Ord. No. 527]

Nothing contained in this article shall relieve or exempt any proprietor of a public eating or drinking place in the city from obtaining a license from the Health Officer as provided in 35 P.S. § 655.1 et seq.

§ 126-11. Inspection duties of Health Officer.

It shall be the duty of the Health Officer, acting under the supervision of the Director of Public Safety and with the approval of the Board of Health, under power and authority herewith granted, or any other duly authorized and designated representative to inspect the food, drink and other commodities prepared, served and sold in each and every public eating and drinking place in the city, including the manner of their preparation, at all reasonable business hours and to ascertain whether such eating and drinking place is being conducted in compliance with the provisions and regulations, current at the time, of the Pennsylvania Department of Health and the provisions of this article and whether any condition existing therein is prejudicial to the public health.

§ 126-12. Employment of diseased persons.

No proprietor shall employ or retain in his employment in such public eating or drinking place any person known or subsequently found to have a communicable disease under the then-current rules and regulations of the Pennsylvania Department of Health.

§ 126-13. Certification of servers of alcohol. [Added 9-11-2000 by Ord. No. 635]

- A. Servers of alcohol. Within one year after the enactment hereof, each licensed food establishment that serves alcohol shall have at least one bar manager, all bartenders/servers and security personnel attend a city and Pennsylvania Liquor Control Board approved course on the responsible serving of alcohol.

- B. **Approved courses.** The City of Pottsville Board of Health shall be responsible for reviewing and approving courses for servers of alcohol. The Board of Health will consult with the Pennsylvania Liquor Control Board to determine approved courses.
- C. **Records of completion.** Food establishments serving alcohol shall be responsible for ensuring that their bartender/servers and security personnel attend and complete an approved course within 90 days of their hiring date and are responsible for maintaining records demonstrating attendance of an approved course. A certificate of completion shall satisfy this requirement. If a certificate of completion is pending, a written statement of completion from a recognized alcohol awareness trainer is acceptable. Such records shall be open for review by the Health Department upon request.

§ 126-14. Violations and penalties. [Amended 12-12-1994 by Ord. No. 527]

Any person violating any of the provisions of this article shall be fined not more than \$1,000 and, in default of payment of fine and costs, be imprisoned not more than 90 days.

ARTICLE II Adoption of State Regulations [Adopted 3-8-2004 by Ord. No. 703]

§ 126-15. Food safety code referenced.

Be it hereby ordained and enacted that the City adopts the Commonwealth of Pennsylvania, Department of Agriculture, Division of Food Safety "Food Code" Regulations, Title 7, Chapter 46.

SPECIAL EVENT LICENSE ORDINANCE - Low-alcohol beer

The proposed ordinance is aimed primarily at restricting underage access to alcohol at events where 3.2% beer is served. It restricts the licenses to events sponsored by nonprofit, religious or charitable organizations. These organizations may obtain only a limited number of licenses within a given year. Each license allows the organization to serve alcohol for a maximum of three days for each event.

The ordinance also requires that all alcohol served at the event must be bought and consumed within a specifically designated area. This designated area must be well-lit to provide for adequate supervision. Warning signs that discourage underage drinking must be posted within the designated area. Food and non-alcoholic beverages must also be provided. In addition, all persons serving alcohol at the event must complete a server training class before the event takes place. The licensee must also have created a written policy saying how it will handle intoxicated drinkers.

This ordinance is based in part on Minnesota Statute §340A.403 and Bloomington Ordinance §13.57.01.

Proposed Ordinance SPECIAL EVENT LICENSES: Low-alcohol beer

Section 1. Requirements.

On-sale special event licenses may be granted for special events held by a religious, charitable, or nonprofit organization. No organization shall be granted more than four (4) special event licenses in any calendar year. Each license may authorize the on-sale of non-intoxicating liquor for no more than three (3) consecutive days. The application shall include the following information:

1. The name and address of the sponsoring religious, charitable, or nonprofit organization;
2. The dates and times of the special event;
3. The location of the special event;
4. The full name, date of birth, and street residence address of an officer or responsible member of the sponsoring religious, charitable, or nonprofit organization;
5. The full name, date of birth, and street residence address of the person(s) who will be in control of the alcoholic beverages at the special event and who will be present during the event to monitor the sales;
6. A physical description of the designated area in which the sale and consumption of the alcoholic beverage will be contained;
7. The name and date of the city-approved server training class all persons selling and managing the sale of alcoholic beverages will attend;
8. Any additional information reasonably required by the issuing authority.

Section 2. Restrictions.

The following restrictions apply to the temporary license:

1. The licensee, person(s) who will be in control of the non-intoxicating liquor, and all persons who will be selling, serving or managing the sale of the non-intoxicating liquor at the event shall complete a city-approved server training class or liquor license training seminar within two (2) years prior to the issuance of the temporary liquor license.

2. The licensee shall provide adequate security, to be determined on a case-by-case basis by the issuing authority, to assure that the purchase and consumption of alcohol is contained within the specially designated area and limited to patrons of legal drinking age. The licensee shall provide a written policy stating how it will handle intoxicated drinkers who provide a risk to themselves and others.
3. The designated area shall be illuminated by lighting of an intensity of at least one (1) foot-candle, so as to provide adequate light for the supervision of the designated area.
4. Non-alcoholic beverages and food shall be provided within the designated area.
5. Warning signs discouraging drinking and driving and underage drinking must be displayed within the designated area.

Section 3. Penalties.

The penalties for violation of this section shall be as follows:

1. For the first violation, a fine not exceeding fifty dollars (\$50).
2. For subsequent violations:
 1. A fine not less than one hundred dollars (\$100) and not exceeding seven hundred dollars (\$700), and
 2. The licensee organization shall not be issued a special event license for a period of eighteen (18) months after the occurrence of this violation.

This ordinance shall take effect immediately.

SPECIAL EVENT LICENSE ORDINANCE - Full liquor

The proposed ordinance is aimed at restricting underage access to alcohol at events where strong beer, wine and liquor are sold. It restricts the licenses to events sponsored by nonprofit, religious or charitable organizations that have been in existence for at least three years (as required by Minnesota state law).

The ordinance requires that all alcohol served at the event be bought and consumed within a specifically designated area which only persons of legal drinking age may enter. This designated area must be well-lit to provide for adequate supervision. Warning signs that discourage underage drinking must be posted within the designated area. Food and non-alcoholic beverages must also be provided.

In addition, all persons serving alcohol at the event must complete a server training class before the event. The licensees must also have a written policy saying how they will handle intoxicated drinkers.

Proposed Ordinance

SPECIAL EVENT LICENSES: Full liquor

Section 1. Requirements.

1. On-sale special event licenses may be granted for special events held by a religious, charitable, or nonprofit organization that has been in existence for at least three (3) years for the on-sale of intoxicating liquor in connection with a social event sponsored by the licensee. No organization shall be granted more than four (4) special event licenses in any calendar year. Each license may authorize the on-sale of alcoholic beverages for no more than three (3) consecutive days.
2. The application shall include the following information:
 1. The name and address of the sponsoring religious, charitable, or nonprofit organization;
 2. The dates and times of the special event;
 3. The location of the special event;
 4. The full name, date of birth, and street residence address of an officer or member of the sponsoring religious, charitable, or nonprofit organization;
 5. The full name, date of birth, and street residence address of the person who will be in control of the alcoholic beverages at the special event and who will be present during the event to monitor the sales;
 6. A physical description of the designated area in which the sale and consumption of the alcoholic beverage will be contained.

Section 2. Requirements.

The following restrictions apply to the special event license:

1. The licensee, persons who will be in control of the intoxicating liquor, and all persons who will be selling, serving or managing the sale of the intoxicating liquor at the event shall complete a city-approved server training class or liquor license training seminar within two (2) years prior to the issuance of the temporary liquor license.

2. The licensee shall provide adequate security, to be determined on a case-by-case basis by the issuing authority, to assure that the purchase and consumption of alcohol is contained within the specially designated area and is limited to patrons of legal drinking age.
3. No person under the legal drinking age shall be permitted to enter the designated area.
4. The designated area shall be illuminated by lighting of an intensity of at least one (1) foot-candle, so as to provide adequate light for the supervision of the designated area.
5. Non-alcoholic beverages and food shall be provided within the designated area.
6. Warning signs discouraging underage drinking and drinking and driving must be displayed within the designated area.

Section 3. Penalties.

The penalties for violation of this section shall be as follows:

1. For the first violation, a fine not exceeding fifty dollars (\$50).
2. For subsequent violations
 1. A fine not less than one hundred dollars (\$100) and not exceeding seven hundred dollars (\$700) and
 2. The licensee organization shall not be issued a special event license for a period of eighteen (18) months after the occurrence of this violation.

This ordinance shall take effect immediately.

ALCOHOL RESTRICTIONS IN CERTAIN AREAS

The proposed ordinance prohibits the possession and consumption of alcohol in public parks, beaches and cemeteries. It also prohibits the consumption of alcohol on streets and other public areas, as well as on any private property without the owner's consent. This ordinance is based on Bloomington, MN Ordinance §13.79.

Proposed Ordinance

Section 1. Prohibition.

The City Council finds that the consumption of alcoholic beverages in certain areas of the City is not compatible with the health and safety of persons using these areas. The City Council, therefore, enacts the following prohibitions:

1. Alcoholic beverages shall not be possessed or consumed by any person in the following areas:
 1. Parks, as defined by [*insert citation to relevant municipal ordinance*] of this Code, except that alcoholic beverages may be possessed or consumed in designated areas when a valid, temporary special event license is issued under [*insert citation to relevant municipal ordinance*];
 2. Cemeteries, as defined by [insert citation to relevant municipal ordinance].

1. Alcoholic beverages shall not be consumed by any person in the following areas:
 1. Public rights-of-way, streets, alleys, boulevards, sidewalks, pathways, bikeways and any other place frequented by the public;
 2. On any private property without the consent of the owner pursuant to Minnesota Statute section 471.985;
 3. While in a vehicle upon a public highway.

Section 2. Penalties.

The penalties for violation of this section shall be as follows:

1. For the first violation, a fine not less than fifty dollars (\$50) and not exceeding one hundred dollars (\$100).
2. For subsequent violations, a fine not less than one hundred dollars (\$100) and not exceeding seven hundred dollars (\$700).

This ordinance shall take effect immediately.

CHAPTER 9.04

GENERAL OFFENSES

9.04.010 Camping on Private Property. It is unlawful for any person to camp, lodge, sleep or tarry at night in or on any private property without the prior permission of the owner of such property. The owner may give prior permission through the owner's lessee or agent. [Ord. 422]

9.04.020 Camping on Public Property.

A. Unless otherwise permitted in accordance with the provisions of this Code, it is unlawful for any person to camp in the hours of darkness on public property to include, without limitation, highways, streets, alleys, rights of way, beaches and parks. [Ord. 469]

B. Camping is evidenced by, among other things, the establishment of sleeping accommodations; the use of a bedroll or sleeping bag; the erection or maintenance of a shelter.

9.04.030 Hunting Prohibited.

A. It shall be unlawful for any person to use any implement, for example, without limitation, firearms, a bow and arrow, crossbow, slingshot, spear, snare, net or trap on public property for the purpose of pursuing, with the intent to kill, injure or capture, any mammal, bird or reptile. [Ord. 473]

9.04.040 Use of Bridges.

A. It is unlawful for any person to dive, fish or jump from any bridge within the City in an area where notice is posted that diving, fishing or jumping is prohibited. [Ord. 470]

B. The City Manager is authorized to erect signs required by this section in accordance with resolutions of the City Council.

9.04.050 Use of Toilets.

A. It is unlawful for a male person to resort to any public toilet set apart for female persons. [Ord.480]

B. It is unlawful for any female person to resort to any public toilet set apart for male persons.

C. This Section does not prohibit a child under the age of six years from resorting to any public toilet while accompanied by that child's father, mother or other responsible adult.

9.04.060 Fireworks Prohibited. It shall be unlawful for any person to sell, use, or discharge fireworks within the City. (Health and Safety Code 12541) [Ord. 494]

9.04.070 Consumption of Alcoholic Beverages on Designated Public Property. [Ord. 737]

A. It shall be unlawful for any person to consume an alcoholic beverage while located on any of the following public areas:

1. Any public street, sidewalk or alley.
2. Caminito Park.

B. For this Section "Alcoholic Beverage" is defined as that term in the California Business and Professions Code. (See BP 23004)

C. It is unlawful for any person to consume any alcoholic beverage or possess any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, on any of the streets, sidewalks, alleys, parking lots, public parking structures, including private parking lots and parking structures held open for public use, public parks, public playgrounds, public buildings, public lavatories or public beach within the city during the Fourth of July holiday period. Said period shall be set by Resolution of the City Council, but in no single year shall exceed ninety-six hours.

D. This Section is not applicable to the consumption of alcoholic beverages done in accordance with a permit issued by the City and then in effect. (See City Code 6.48)

Chapter 246. Drinking on Streets and in Parks*

- Sec. 246.01. Drinking on streets and in parks.
 - Sec. 246.02. Seizure and impoundment.
 - Sec. 246.03. Not applicable on licensed premises.
 - Sec. 246.04. Designation of permitted shelters, facilities and areas.
 - Sec. 246.05. No consumption at any time in certain parks.
 - Sec. 246.06. Definitions.
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***Editor's note**--This chapter is derived from Code 1956, § 438.07; and from the following ordinances: Ord. No. 17022, adopted May 24, 1983; and Ord. No. 17294, § 1, adopted Oct. 3, 1985.

Sec. 246.01. Drinking on streets and in parks.

No person shall upon the public streets, lanes or alleys of the city, or in any park, playground or recreation center owned by or under the jurisdiction or control of the City of Saint Paul or in any parking lot or area within or adjacent to such park, playground or recreation center, or being a trespasser upon the private premises of another, drink or have in his/her possession in an opened container any intoxicating liquor, intoxicating malt liquor, nonintoxicating malt liquor or alcoholic beverage of any kind whatever. No person shall in any park, playground or recreation center owned by or under the jurisdiction or control of the City of Saint Paul or in any parking lot or parking area within or adjacent to such park, playground or recreation center, or being a trespasser upon the private premises of another, have in his possession any intoxicating liquor, intoxicating malt liquor, nonintoxicating malt liquor or alcoholic beverage of any kind whatever. No person shall have in his possession any intoxicating liquor, intoxicating malt liquor, nonintoxicating malt liquor or alcoholic beverage of any kind whatever upon any public street, lane or alley located within the boundaries of such a park, playground or recreation center; provided, however, that it shall be an affirmative defense that possession was for the purpose of transportation of such liquor or beverage through the park, playground or recreation center or to a designated shelter, facility or area as provided herein, and where such liquor or beverage is in an unopened container. Notwithstanding the foregoing, any person may, from 8:00 a.m. to 8:00 p.m., within picnic shelters, facilities or areas within any park, playground or recreation center, which are designated for that purpose by the director of the division of parks and recreation or his delegate, drink or have in possession nonintoxicating malt liquor. Notwithstanding any other provision of this chapter, the director of the division of parks and recreation or his delegate may issue permits for the consumption of intoxicating liquor in Town Square Park and Phalen Park Clubhouse during hours in which the sale of liquor by the drink is permitted by state law. All permits shall be subject to regulations which have been proposed by the director of the division of parks and recreation and approved by the city council. Copies of the regulations shall be on file in the offices of the city clerk, director of the division of parks and recreation, and the superintendent of parks and recreation. Such regulations may be amended by the council by resolution.

(Ord. No. 17294, § 1, 10-3-85; C.F. No. 94-1033, § 4, 9-14-94; C.F. No. 95-795, § 4, 8-9-95; C.F. No. 97-603, § 1, 6-25-97; C.F. No. 97-625, § 1, 6-25-97; C.F. No. 01-375, § 1, 5-2-01; C.F. No. 01-375, § 1, 5-2-01)

Sec. 246.02. Seizure and impoundment.

All intoxicating liquor, intoxicating or nonintoxicating malt liquor, or alcoholic beverages, drunk or possessed in violation of this chapter shall be seized and impounded as evidence of said violations. Such evidence shall be destroyed by the department of police upon a plea or finding of guilty in regard to any of said violations.

(C.F. No. 94-1033, § 4, 9-14-94; C.F. No. 95-795, § 4, 8-9-95; C.F. No. 97-603, § 1, 6-25-97; C.F. No. 97-625, § 1, 6-25-97)

Sec. 246.03. Not applicable on licensed premises.

(a) This chapter shall not apply to or prohibit the sale, possession or consumption of such liquors or beverages on the premises of any establishment properly licensed under Chapter 409 or Chapter 410 of the Saint Paul Legislative Code.

(b) Notwithstanding the prohibitions of section 246.01, the sale and service of alcoholic beverages within a sidewalk cafe by a food establishment, which is licensed as a restaurant under Chapter 331A of the Legislative Code and which is in compliance with the provisions of section 106.01 of the Legislative Code, is permitted.

(c) The prohibitions of section 246.01 shall not apply to or prohibit the possession or consumption of nonintoxicating malt liquor, strong beer or wine purchased and consumed during a block party, festival or community event which has been duly licensed under Chapter 366 of the Legislative Code, when such possession or consumption occurs on a street which has been blocked off for the block party, festival or community event in the downtown business district and the nonintoxicating malt liquor, strong beer or wine is purchased from a duly licensed vendor.

(d) Notwithstanding the prohibitions of section 246.01, the director of the division of parks and recreation may authorize the sale or service of alcoholic beverages on property under its jurisdiction by either a person who is the holder of a state catering permit and who has complied with the provisions of Saint Paul Legislative Code § 409.01 or by the holder of a temporary wine and liquor license issued pursuant to § 409.25 or temporary 3.2 beer license issued pursuant to § 410.10, except that in no event can the prohibitions contained in section 246.05 be waived. Such sale or service must be in connection with an event of limited duration which has been approved by the director of parks and recreation and is subject to all other requirements and restrictions contained in Minn. Stat. Chapter 340A and Saint Paul Legislative Code Chapters 409 and 410.

(C.F. No. 94-1033, § 4, 9-14-94; C.F. No. 95-795, § 4, 8-9-95; C.F. No. 97-603, § 1, 6-25-97; C.F. No. 97-625, § 1, 6-25-97; C.F. No. 01-375, § 2, 5-2-01; C.F. No. 02-710, § 1, 9-4-02; C.F. No. 03-371, § 1, 5-7-03)

Sec. 246.04. Designation of permitted shelters, facilities and areas.

The director of the division of parks and recreation shall promulgate, by filing with the city clerk, a list or description of the picnic shelters, park facilities or park areas within which the possession and consumption of nonintoxicating malt liquor is permitted by this chapter between the hours of 8:00 a.m. and 8:00 p.m., together with such maps or illustrations as may assist the public to comply with this chapter. The director shall also direct that appropriate signs be erected at locations in which the consumption and possession of nonintoxicating malt liquor is permitted. It shall not be a defense to a charge of violation of this chapter that such informational signs, maps or illustrations are defaced or removed from the shelters or facilities designated, so long as the list required by this section has been filed with the city clerk.

(C.F. No. 94-1033, § 4, 9-14-94; C.F. No. 95-795, § 4, 8-9-95; C.F. No. 97-603, § 1, 6-25-97; C.F. No. 97-625, § 1, 6-25-97; C.F. No. 01-375, § 3, 5-2-01)

Sec. 246.05. No consumption at any time in certain parks.

The director of the department of community services shall not have the power to designate any shelter, facility or place within Hidden Falls Park or Crosby Lake Park for permitted possession or consumption of nonintoxicating malt liquor. No person shall at any time consume or possess any intoxicating liquor, intoxicating or nonintoxicating malt liquor, or alcoholic beverage of any kind in Hidden Falls Park or Crosby Lake Park.

(C.F. No. 94-1033, § 4, 9-14-94; C.F. No. 95-795, § 4, 8-9-95; C.F. No. 97-603, § 1, 6-25-97; C.F. No. 97-625, § 1, 6-25-97)

Sec. 246.06. Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

(1) The term "intoxicating liquor" and the term "intoxicating malt liquor" mean and include ethyl alcohol, distilled, fermented, spirituous, vinous or malt beverages containing in excess of three and two-tenths (3.2) percent of alcohol by weight or containing in excess of four (4.0) percent alcohol by volume.

(2) The term "nonintoxicating malt liquor" means and includes any malt liquor containing not less than one-half of one percent (1/2 of 1%) of alcohol by volume nor more than three and two-tenths (3.2) percent of alcohol by weight.

(3) The term "alcoholic beverage" means and includes any beverage containing ethyl alcohol in any quantity or amount.

(4) The term "downtown business district" means and includes that portion of the City of Saint Paul lying within and bounded by the following streets: Beginning at the intersection of Shepard Road with Chestnut Street, Chestnut Street to Interstate Freeway 35E, Interstate Freeway 35E to Tenth Street, Tenth Street to Interstate Freeway 94, Interstate Freeway 94 to Lafayette Bridge, Lafayette Bridge to where the bridge crosses over Warner Road, Warner Road to the Wabasha Bridge, the Wabasha Bridge across the Mississippi River to the water line on the south bank of the river, thence in a westerly direction along the shore line to the point at which it intersects with "Line A," and then in a straight line across the Mississippi River to the intersection of Chestnut Street with Shepard Road. The location and legal description of "Line A" are set forth in the map attached hereto, and incorporated and adopted herein by reference.

(C.F. No. 94-1033, § 4, 9-14-94; C.F. No. 95-795, § 4, 8-9-95; C.F. No. 97-603, § 1, 6-25-97; C.F. No. 97-625, § 1, 6-25-97)

Chapters 247--249. Reserved

**Noisy or Unruly Assembly
Minneapolis, MN**

389.65. Public nuisance noise.(a) It shall be unlawful for any person to make, continue, permit, or cause to be made or continued within the city, any loud, disturbing or excessive noise which would be likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area.

(b) The characteristics and conditions which shall be considered in determining whether a noise is loud, disturbing, or excessive for the purposes of paragraph (a) of this section, shall include, but not be limited to the following:

- (1) Whether the nature of the noise is usual or unusual.
- (2) Whether the origin of the noise is natural or unnatural.
- (3) The proximity of the noise to sleeping facilities.
- (4) The land use, nature, and zoning of the area from which the noise emanates and the area where it is received.
- (5) The time of day or night when the noise occurs.
- (6) The duration of the noise.
- (7) Whether the noise is recurrent, intermittent, or constant.
- (8) Whether the noise is produced by a commercial or noncommercial activity.
- (9) Whether or not noise abatement measures are possible and whether or not they are used to reduce the sound level.
- (10) The number of people and their activities that are affected by the noise.
- (11) The sound peak pressure level of the noise on the A scale, if known.
- (12) The A scale level of ambient noise, if known.
- (13) The nature of any communicative content of the noise shall not be considered, for the purpose of this section, except:

a. No noise shall be prohibited or restricted by this section which substantially burdens a person's exercise of religion unless it is demonstrated that application of the burden to the person is:

1. in furtherance of a compelling governmental interest.
2. the least restrictive means of furthering that compelling governmental interest.
3. consistent with Article I, Section 16 of the Minnesota Constitution.

b. No noise shall be prohibited or restricted by this section which substantially limits speech unless such a prohibition or restriction:

1. serves a significant governmental interest as applied in a particular case.
2. as applied in the particular case there are other ample alternative channels for communication of the information.
3. application of the regulation in the particular case promotes a substantial government interest that would be achieved less effectively absent application of the regulation.

(c) *Activities which constitute a public nuisance.* The following acts are violations of this section, subject to enforcement through criminal, civil and administrative means, without reference to the standards of paragraphs (a) and (b) of this section, with the exception of section 389.65(b)(13), namely:

- (1) *Noisy or unruly assembly.* Participating in, conducting, visiting, or remaining at a gathering knowing or having reason to know that the gathering is a noisy or unruly

assembly, as defined in section 389.30, except person(s) who have come to the gathering for the sole purpose of abating the disturbance.

a. The premises at which a noisy or unruly assembly occurs shall additionally be subject to a notice of noisy or unruly assembly as further described in this section.

b. A notice of noisy or unruly assembly shall be sent within ten (10) business days via first class mail to the owner and/or rental license holder of record of any premises at which a noisy or unruly assembly is determined to have taken place by the Minneapolis Police Department. The Minneapolis Police Department may, upon determining that the issuance of a notice would be contrary to public policy, refrain from such issuance when emergency services were summoned by a person taking part in the noisy or unruly assembly, or when the noisy or unruly assembly was created primarily by the occurrence of an incident of domestic abuse, as that term is defined in Minnesota Statute Section 518B.01, or wholly through the actions of uninvited guests or trespassers.

1. Each notice of noisy or unruly assembly shall state that a noisy or unruly assembly has occurred on the premises; the date, time and nature of the noisy or unruly assembly; and that the owner, rental license holder or landlord may be issued an administrative citation should police respond to any additional noisy or unruly assemblies within one hundred eighty (180) days of the date of the noisy or unruly assembly which triggered the notice. Each notice shall further state the date of expiration for the notice, which shall be one hundred eighty (180) days from the date of the noisy or unruly assembly which triggered the notice. The notice shall direct the owner, rental license holder or landlord to take steps to ensure that the premises are not used for additional noisy or unruly assemblies.

2. Right to contest issuance of notice. An owner, rental license holder or landlord who receives a notice may contest its issuance by requesting an administrative hearing pursuant to Chapter 2 of this Code. The hearing shall proceed pursuant to and be governed by the administrative hearing procedures of Chapter 2. At the hearing, the city shall bear the burden of proving by a preponderance of the evidence that a noisy or unruly assembly occurred and that the issuance of the notice was justified pursuant to the provisions of this chapter. Should the owner, rental license holder or landlord of the property affirmatively demonstrate that the issuance was based wholly upon the actions of uninvited guests or trespassers, the notice shall be deemed invalid and rescinded. An owner, rental license holder or landlord who receives a notice, may at any time petition the designated agent of the Minneapolis Police Department for a written order rescinding the notice on the grounds that he or she has taken reasonable and necessary actions, as defined in section 389.30, to prevent the occurrence of subsequent noisy or unruly assemblies. The designated agent of the Minneapolis Police Department may grant or deny the request for good cause. A denial of such a request may be contested by requesting an administrative hearing pursuant to Chapter 2 of this Code. At the hearing, the petitioner shall bear the burden of proving by a preponderance of the evidence that the petitioner has taken reasonable and necessary actions to prevent subsequent noisy or unruly assemblies at the premises. Each notice of noisy or unruly assembly shall contain a recitation of these appeal rights. In any event, the notice shall be rescinded upon the presentation of adequate verification to the Minneapolis Police Department of the final departure from the unit that triggered the notice of every resident living in that unit at the time of the incident that formed the basis for the notice.

3. The criminal, civil or administrative enforcement of this section shall not preclude any additional enforcement or application of any other provisions of this Code, including but not limited to section 244.2020, Conduct on licensed premises or section 244.1940, Denial; non-renewal; revocation; suspension.

c. Administrative enforcement. When the police department, fire department or other emergency response personnel respond to a noisy or unruly assembly at the same premises within one hundred eighty (180) days of the date of any previous noisy or unruly assembly for which a notice of noisy or unruly assembly was served and remains valid, the owner, rental license holder or landlord of the premises shall be issued an administrative citation pursuant to Chapter 2 of this Code in an amount as specified in the schedule of civil fines as adopted by resolution of the city council. However, in no case shall any such citation be issued pursuant to this section for any noisy or unruly assembly occurring within twenty-one (21) days of the mailing of the notice.

d. Applicability to multiple dwellings and duplexes. Notwithstanding subdivision (c)(1)(c) of this section, when a noisy or unruly assembly occurs on a premises on which any multiple dwelling, defined in section 244.40, or duplex is located, an administrative citation shall be issued pursuant to this section only if one (1) the following circumstances has occurred:

1. A previous notice of noisy or unruly assembly has been served and remains valid for an incident occurring in the same dwelling unit in which the incident occurred that forms the basis for the administrative citation;

2. A previous notice of noisy or unruly assembly has been served and remains valid for an incident in which any resident or guest of a resident participated, and that same resident or guest of a resident also participated in the incident that forms the basis for the administrative citation; or

3. A previous notice of noisy or unruly assembly has been served and remains valid for an incident occurring in any nondwelling structure, common area, outdoor area, or other nondwelling area of the premises, and the incident that forms the basis for the administrative citation also occurred in any one (1) of these areas.

(2) *Permitting noisy or unruly assembly.* Knowingly permitting real estate under one's care or control to be used for a noisy or unruly assembly, as defined in section 389.30.

(3) *Horns and other signal devices.* The sounding of any horn or signal device on an automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal or traffic warning.

(4) *Keeping animals or birds.* The keeping of any animal or bird which causes long, frequent, and/or continuous noise which would be likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area.

(5) *Operation of vehicles.* The use of any automobile, pickup truck, motorcycle, or other vehicle which is not reasonably maintained and which causes noise which would be likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area.

(6) *Amplified sound from vehicles.* Except as provided in section 389.105, the playing or operation, or permitting the playing, use or operation, of any radio, tape player, disc player, loud speaker, or other electronic device used for the amplification of music or other entertainment, which is located within a motor vehicle being operated on a public street or alley, or in commercial or residential parking facilities, which is audible by any

person from a distance of fifty (50) feet or more from the vehicle. When sound violating this section is produced or reproduced by any such device that is located in a motor vehicle, the motor vehicle's owner, if present when the violation occurs, is in violation of this section. If the motor vehicle's owner is not present at the time of the violation, the person in charge or control of the vehicle at the time of the violation is in violation of this section. In addition to an owner or a driver, any person who controls or assists with the production of sound violating this section is in violation of this section. Violation of this subsection is a misdemeanor. A first violation of this subsection is punishable by a fine not to exceed five hundred dollars (\$500.00), a second violation is punishable by a fine not to exceed seven hundred dollars (\$700.00), and a third violation is punishable by a fine to the maximum amount.

(7) *Amplified sound.* The playing or operation, or permitting the playing, use or operation, of any radio tape player, loud speaker or other electronic device used for the amplification of sound (except as specifically permitted under section 389.105) located inside or outside, the sound of which carries to points of habitation on adjacent properties, and is audible above the level of conversational speech at a distance of fifty (50) feet or more from the point of origin of the amplified sound. (97-Or-063, § 7, 7-11-97; 97-Or-067, § 2, 7-25-97; 2006-Or-005, § 2, 2-10-06)

City of Norman, OK

ARTICLE V. OFFENSES AGAINST THE PEACE

Sec. 15-501. Assault; battery.

No person shall assault or batter another, or commit an assault and battery.

(Ord. No. 0-7273-56)

Sec. 15-502. Discharging firearms, exceptions.

(a) Except as otherwise provided, no person shall discharge any firearm, BB gun or air rifle within the City limits.

(b) Persons excepted from the above subsection are:

- (1) Individuals practicing at an authorized firing range,
- (2) Police and security guards in performance of their duties,
- (3) Persons lawfully defending themselves, their property, or another's person or property,
- (4) Hunters in those areas zoned A-2, so long as the bullet or projectile does not pass or is likely to pass through or fall within a populated area or place of habitation.

(Ord. No. 0-7273-56)

Cross references: Persons hunting in area referred to in subsection (b) (4) above exempt from prohibition against killing wild birds, § 3-502.

Sec. 15-503. Disturbing the peace.

No person shall disturb the peace of another by:

- (1) Violent, obstreperous, or improper conduct or carriage which in its common acceptance is calculated, or where the natural consequence is to cause an assault, battery or other breach of the peace;
- (2) Unseemly, obscene, offensive, insulting or abusive language which in its common acceptance is calculated, or where the natural consequence is, to cause an assault, battery, or other breach of the peace;
- (3) Playing or creating loud or unusual sounds;
- (4) Circulating literature which casts ridicule upon any deity or religion, which in its common acceptance is calculated to cause an assault, battery, or other breach of the peace;
- (5) Displaying any sign, emblem, badge, flag or other device, which in its common acceptance is calculated, or where the natural consequence is, to cause an assault, battery, or other breach of the peace.

(Ord. No. 0-7273-56)

Sec. 15-504. Possession of certain weapons, exceptions.

(a) Except as otherwise provided in Title 21 of the Oklahoma Statutes, no person shall carry upon his or her person or vehicle, either concealed or unconcealed:

- (1) Any pistol or revolver;
- (2) Any knife, dirk, or dagger having a blade length exceeding four (4) inches; or
- (3) Any other dangerous or deadly weapon.

(b) Persons excepted from the above subsection are those individuals:

- (1) Carrying firearms under the provisions of Title 21 of the Oklahoma Statutes;
- (2) Carrying knives otherwise prohibited:
 - (a) While lawfully hunting or camping;
 - (b) While transporting such knives incidental to their display, repair, trade, barter, or sale;
 - (c) As tools or implements of that individual's trade or occupation.

(Ord. No. 0-7273-56; Ord. No. 0-7576-48; Ord. No. 0-9697-19)

Cross references: Authority of Mayor to restrict or prohibit possession of firearms and other weapons during civil emergency, § 2-111 (b) (4); permit for private security officers to carry firearms, § 13-1907.

Sec. 15-505. Unlawful assembly.

No two (2) or more persons shall assemble riotously, or being assembled together act in concert to do any unlawful act against the peace or the public safety of others.

(Ord. No. 0-7273-56)

Cross references: Emergency powers of Mayor in cases of riot or unlawful assembly, § 2-2111.

Sec. 15-506. Nuisance party.

(a) No person, owner, occupant, tenant or other person in possession, control or having responsibility for, individually or jointly with others, of any premises shall sponsor, conduct, host, allow or permit a social gathering or party on the premises which is or becomes a public nuisance.

(b) A social gathering shall be deemed to constitute a public nuisance when, by reason of the conduct of persons in attendance, it results in three (3) or more of the following violations of the Code of the City of Norman, Oklahoma, and which violations occur at the site of the social gathering or on neighboring public or private property:

- (1) Any violation of Chapter 9 of the City Fire Prevention Code;
- (2) Any of the following violations from Chapter 10 of the City Code:
 - i. 10-107 Open burning prohibited.
 - ii. 10-203 Health nuisances.
 - iii. 10-205 Obstructions in easements a nuisance.
 - iv. 10-307 Noises prohibited.

(3) Any of the following violations from Chapter 15 of the City Code:

- i. 15-302 Drinking intoxicating beverages in a public place.
- ii. 15-304 Possession of alcoholic beverages.
- iii. 15-305 Furnishing alcoholic beverages.
- iv. 15-405 Harmful substances being possessed, sold, distributed or consumed; exceptions.
- v. 15-406 Narcotics.
- vi. 15-407 Nudity, indecent exposure.
- vii. 15-411 Outraging public decency.
- viii. 15-412 Furnishing of tobacco products to minors; possession by minors.
- ix. 15-413 Possession or sale of drug related paraphernalia.
- x. 15-501 Assault; battery.
- xi. 15-502 Discharging firearms, exceptions.
- xii. 15-503 Disturbing the peace.
- xiii. 15-504 Possession of certain weapons, exceptions.
- xiv. 15-505 Unlawful assembly.
- xv. 15-601 Interference with property's use.
- xvi. 15-602 Molesting property, exceptions.
- xvii. 15-605 Trespass; illegal entrance; exceptions.
- xviii. 15-608 Graffiti.
- xix. 15-701 Assault and battery on City officers.
- xx. 15-703 Littering.
- xxi. 15-704 Obstructions of the public way or access.

(Ord. No. 0-0405-55, § 1)

Sec. 15-507. No person shall attend or contribute to a nuisance party.

Upon a declaration of a police officer that a social gathering or party on the premises is declared to be a nuisance, no person shall remain at the site of the social gathering or party without proof of domicile at that residence. Failure to disperse from the public nuisance shall be a violation.

(Ord. No. 0-0405-55, § 2)

ORDINANCE NUMBER 2827

AN ORDINANCE AMENDING CHAPTER 16, MISCELLANEOUS OFFENSES AND PROVISIONS, OF THE STILLWATER MUNICIPAL CODE BY REPEALING IN ITS ENTIRETY SECTION 16-79, DISTURBING THE PEACE, AND BY CREATING SECTION 16-79, NOISE PROHIBITED, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND CITY COMMISSIONERS OF THE CITY OF STILLWATER, OKLAHOMA:

Section 1: That Chapter 16 of the Stillwater Municipal Code be amended by repealing Section 16-79, Disturbing the peace, and by creating Section 16-79, Noise Prohibited, to read as follows:

Sec. 16-79. Noise Prohibited.

1. Prohibited Acts Generally.

It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud noise or any noise which disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the City of Stillwater.

2. Prohibited Acts Specifically.

The following acts, among others, are declared to be unreasonable or disturbing noises in violation of this ordinance, but said enumeration shall not be deemed to be exclusive, namely:

A. *Public loudspeakers.* Using or operating a loudspeaker or sound amplifying equipment in a fixed or movable position or mounted upon any sound vehicle in or upon any street, alley, sidewalk, park, place, or public property for the purpose of commercial advertising, giving instructions, directions, talks, addresses, lectures, or transmitting music to any persons or assemblages of persons wherein the sound emanating from such device is plainly audible inside a neighboring residential occupancy when the doors and windows are closed.

B. *Yelling, shouting, etc.* Yelling, shouting, whistling or otherwise creating unreasonable noise particularly between the hours of 10:00 PM and 8:00 AM, or at any time or place so as to disturb the quiet, comfort, or repose of persons in any neighboring residential occupancy when the doors and windows are closed.

C. *Construction or repairing of buildings.* The erection (including excavation), demolition, alteration or repair of any building shall be prohibited between the hours of 10:00 PM. and 6:00 AM, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the city.

D. *Schools, courts, churches, hospitals, parks.* The creation of any unreasonable noise adjacent to any school, church or court while the same are in use, or adjacent to any hospital, medical clinic, or nursing home which unreasonably interferes with the workings of such institution, or which disturbs patients in the hospital, or in any park, which unreasonably disturbs the users thereof. This subsection shall not apply to businesses located in areas zoned "CS," "CI," "CC," "CH," "CG" or any successor classification whenever any of the uses enumerated in this subsection moves or otherwise locates in an area zoned for commercial use.

E. *Power lawn mowers.* The operation of any gasoline or similar internal combustion engine powered mower, cultivator, blower, weedcutter or like or related device in an area zoned residential between the hours of 10:00 PM. and 6:00 AM.

3. Exceptions.

The following uses and activities shall be exempt from these regulations:

- A. Noises of safety signals, warning devices, and emergency pressure relief valves.
- B. Noises resulting from any authorized emergency vehicle, when responding to an emergency.
- C. Noises resulting from emergency work.
- D. Any other noise resulting from activities of a temporary duration permitted by law for which a license or permit therefore has been granted by the city in accordance with this ordinance.
- E. Any aircraft or railroad equipment operated in conformity with, or pursuant to state statute, federal law, federal regulations and traffic control instruction used pursuant to and within the duly adopted state or federal regulations. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt.
- F. School sponsored activities conducted on school property.
- G. Church related activities conducted on church property.
- H. City sponsored or permitted parades and events.

4. Definitions, Scope.

For the purposes of this ordinance, "plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. A "residential occupancy" includes single family dwellings, multiple family dwellings, boarding house rooms, hotel rooms or motel rooms.

5. Application for Special Permit.

Applications for a permit for relief from the noise level designated in this ordinance on the basis of undue hardship may be made to the city manager or duly authorized representative. Any permit granted by the city manager hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The city manager or duly authorized representative may grant a relief as applied for if they find:

- A. That additional time is necessary for the applicant to alter or modify the activity or operation to comply with this chapter; or
- B. The activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with this chapter; and
- C. That no other reasonable alternative is available to the applicant.

The city manager, in granting such a special permit, may prescribe any conditions or requirements they deem necessary to minimize adverse effects upon the community of the surrounding neighborhood. Any denial of an application under this section shall be appealable to the board of commissioners upon written application filed within ten (10) days of the date notice of the city manager's decision is mailed to the applicant.

6. Penalty.

Any person violating any of the provisions of this title shall be deemed guilty of an infraction punishable as a Class B offense. Each occurrence when such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense.

Section 2. Emergency.

It being immediately necessary for the preservation of the public health, peace and safety that an emergency is declared to exist, by reason whereof this ordinance shall become effective from and after the date of publication, August 12, 2004.

PASSED, APPROVED AND ADOPTED this 9th day of August, 2004.

BUD LACY, MAYOR

(SEAL)

ATTEST:

MARCY ALEXANDER, CITY CLERK

The Emergency Clause is hereby passed, approved and adopted this 9th day of August, 2004.

BUD LACY, MAYOR

(SEAL)

ATTEST:

MARCY ALEXANDER, CITY CLERK

By: _____

APPROVED AS TO FORM AND LEGALITY THIS 9th DAY OF August, 2004.

JOHN E. DORMAN,
CITY ATTORNEY

FIRST READING: 8-2-04
SECOND READING: 8-9-04

ORDINANCE NUMBER 2828

AN ORDINANCE AMENDING CHAPTER 16, MISCELLANEOUS OFFENSES AND PROVISIONS, OF THE STILLWATER MUNICIPAL CODE BY REPEALING IN ITS ENTIRETY SECTION 16-83, DISTURBANCE BY LOUD OR UNUSUAL NOISE PROHIBITED, AND BY CREATING SECTION 16-83, LOUD MUSIC PROHIBITED, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND CITY COMMISSIONERS OF THE CITY OF STILLWATER, OKLAHOMA:

Section 1: That Chapter 16 of the Stillwater Municipal Code be amended by repealing Section 16-83, Disturbance by loud or unusual noise prohibited, and by creating Section 16-83, Loud Music Prohibited, to read as follows:

Sec. 16-83. Loud Music Prohibited.

The following acts are declared to be unreasonably loud or disturbing noises in violation of this ordinance, to-wit:

(1) The playing, using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, stereo, or other machine or device for the producing or reproducing of sound in such manner between the hours of 8:00 AM and 10:00 PM wherein the sound emanating from such device is plainly audible at a distance of one hundred feet (100') from the source or is plainly audible inside a neighboring residential occupancy with the doors and windows closed.

(2) The playing, using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, stereo, or other machine or device for the producing or reproducing of sound in such manner between the hours of 10:00 PM and 8:00 AM wherein the sound emanating from such device is plainly audible at a distance of fifty feet (50') from the source or is plainly audible inside a neighboring residential occupancy with the doors and windows closed.

(3) The playing, using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, stereo or other machine or device for the producing or reproducing of sound in such manner wherein the sound emanating from such device is plainly audible inside a school, church, hospital medical clinic, or nursing home during operating or business hours with the doors and windows closed. This subsection shall not apply to businesses located in areas zoned "CS," "CI," "CC," "CH," "CG" or any successor classification whenever any of the uses enumerated in this subsection moves or otherwise locates in an area zoned for commercial use.

(4) For the purposes of this ordinance, "plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. An enforcement officer need not determine the title of a song, specific words, or the artist performing the song; the detection of the rhythmic bass component of the music is sufficient to constitute a plainly audible sound. A "residential occupancy" includes single family dwellings, multiple family dwellings, boarding house rooms, hotel rooms or motel rooms.

(5) The following uses and activities shall be exempt from these regulations:

- a. School sponsored activities conducted on school property at times other than between the hours of 10:00 PM and 7:00 AM.
- b. Church related activities conducted on church property at times other than between the hours of 10:00 PM and 7:00 AM.
- c. City sponsored or permitted parades and events authorized pursuant to Section 16-79 of this Chapter.
- d. Businesses located in areas zoned "CS," "CI," "CC," "CH," "CG" or any successor classification, provided that the sound is not plainly audible inside a residential occupancy located outside of the zoning district wherein the business is located, when the doors and windows of said

residential occupancy are closed.

(6) Any person violating any of the provisions of this title shall be deemed guilty of a Class B offense. Each occurrence when such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense. Each device found to be emitting sound in violation of this ordinance shall be deemed a separate violator and shall be punishable as a separate offense.

Section 2. Emergency.

It being immediately necessary for the preservation of the public health, peace and safety that an emergency is declared to exist, by reason whereof this ordinance shall become effective from and after the date of publication, August 12, 2004.

PASSED, APPROVED AND ADOPTED this 9th day of August, 2004.

BUD LACY, MAYOR

(SEAL)

ATTEST:

MARCY ALEXANDER, CITY CLERK

The Emergency Clause is hereby passed, approved and adopted this 9th day of August, 2004.

BUD LACY, MAYOR

(SEAL)

ATTEST:

MARCY ALEXANDER, CITY CLERK

By: _____

APPROVED AS TO FORM AND LEGALITY THIS 9th DAY OF August, 2004.

JOHN E. DORMAN
CITY ATTORNEY

FIRST READING: 8-2-04
SECOND READING: 8-9-04

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 6, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 56.60, 56.62, AND 56.63, AND ADDING SECTIONS 56.64 AND 56.65, RELATING TO THE PROHIBITION AGAINST HOSTING, PERMITTING, OR ALLOWING GATHERINGS WHERE MINORS ARE CONSUMING ALCOHOLIC BEVERAGES.

WHEREAS, the City of San Diego, pursuant to the police powers delegated to it by the California Constitution and as a charter city, has the authority to enact laws that promote the public health, safety, and general welfare of its residents; and

WHEREAS, the City of San Diego, acting through the City Council [the Council] finds that parties, gatherings, or events [gatherings] on private property where alcoholic beverages are consumed by minors, who are under the legal age to consume alcohol in the State of California, are harmful to the minors themselves and a threat to public health, safety, quiet enjoyment of residential property, and general welfare; and

WHEREAS, the Council finds that minors often obtain alcoholic beverages at gatherings held at private residences or other private property, places, or premises, including rented commercial premises, which are under the control of a person who knows or should know of the consumption of alcoholic beverages by minors; further, the Council finds that persons responsible for the occurrence of such gatherings often fail to take reasonable steps to prevent the consumption of alcoholic beverages by minors at these gatherings; and

WHEREAS, control of gatherings on private property where alcoholic beverages are consumed by minors is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public; and

WHEREAS, police officers often are required to make multiple responses to the location of a gathering where alcoholic beverages are consumed by minors in order to disperse uncooperative participants, causing a drain on public safety resources and in some cases, leaving other areas of the City with delayed police response; and

WHEREAS, problems associated with gatherings where alcoholic beverages are consumed by minors are difficult to prevent and deter unless the City of San Diego Police Department has the legal authority to arrest offenders and direct the host to disperse the gathering; and

WHEREAS, police ability to abate gatherings on private property where alcohol is consumed by minors will result in a decrease in abuse of alcohol by minors, physical altercations and injuries, neighborhood vandalism, and excessive noise disturbance, thereby improving public safety; and

WHEREAS, on May 6, 2003, the Council adopted Ordinance O-19172 N.S., to amend the San Diego Municipal Code by adding Sections 56.60, 56.61, 56.62, and 56.63, making it unlawful for any minor, under the age of 21, to consume alcohol in any public place, place open to the public, or place not open to the public unless supervised by the minor's parent or guardian, and unlawful for any person to allow or host a party where three or more minors are present and alcohol is being consumed by a minor; and

WHEREAS, the Council made the following findings and declarations on May 6, 2003: that the purpose of Ordinance O-19172 N.S. was (1) to protect public health, safety, and general

welfare; (2) to enforce laws prohibiting the consumption of alcohol by minors; and (3) to reduce the costs of providing police services to parties, gatherings, or events requiring a response by requiring party hosts to ensure minors are not consuming alcoholic beverages; and

WHEREAS, the Council finds and declares that the original purpose of Ordinance O-19172 was justified and a proper exercise of the power and authority of a charter city to regulate consumption of alcohol by minors because this consumption of alcohol by minors impacts the health, safety, and general welfare of San Diego's citizens and communities; and

WHEREAS, on September 7, 2004, the Appellate Division of the San Diego Superior Court held, in an unpublished opinion, that San Diego Municipal Code section 56.62(a), as originally enacted on May 6, 2003, was "constitutionally impermissible" because of "the lack of a mens rea [or intent] in this ordinance"; and

WHEREAS, the Council hereby amends San Diego Municipal Code Sections 56.60, 56.62, and 56.63, and adds Sections 56.64 and 56.65 to add the requisite intent to the ordinance to conform with state and federal law and to set forth the remedies available to the City for violations of this Ordinance; and

WHEREAS, it is the intent of the Council that criminal liability under San Diego Municipal Code Section 56.62, as amended herein, applies to any person in control of private property who knowingly hosts, permits, or allows a party, gathering, or event where minors are present and an alcoholic beverage is being consumed by any minor, where the person in control of the private property knows or reasonably should know that a minor has consumed an alcoholic beverage; and

WHEREAS, it is the further intent of the Council to impose a duty on any person having control of any residence or other private property, place, or premises, including any commercial

premises, who knowingly hosts, permits, or allows a party, gathering, or event, to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering; NOW, THEREFORE:

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 6, of the San Diego Municipal Code is amended to read by amending Sections 56.60, 56.62, 56.63, and adding 56.64 and 56.65, as follows:

§56.60 Definitions

Each word or phrase that is defined in Sections 56.60, 56.61, 56.62, 56.63, and 56.64 appears in the text of these Sections in italicized letters. For purposes of Sections 56.61 through 56.64, the following definitions shall apply:

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one (1) percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

Gathering is a party, gathering, or event, where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

Legal Guardian means (1) a person who, by court order, is the guardian of the person of a *minor*; or (2) a public or private agency with whom a *minor* has been placed by the court.

Minor means any person under twenty-one years of age.

Parent means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.

Premises means any residence or other private property, place, or premises, including any commercial or business premises.

Response costs are the costs associated with responses by law enforcement, fire, and other emergency response providers to a *gathering*, including but not limited to: (1) salaries and benefits of law enforcement, code enforcement, fire, or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with a *gathering*, and the administrative costs attributable to such response(s); (2) the cost of any medical treatment for any law enforcement, code enforcement, fire, or other emergency response personnel injured responding to, remaining at, or leaving the scene of a *gathering*; (3) the cost of repairing any City equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of a *gathering*; and (4) any other allowable costs related to the enforcement of Sections 56.61 and 56.62.

§56.61 [No change in text.]

§56.62 **Hosting, Permitting, or Allowing a Party, Gathering, or Event Where Minors Consuming Alcoholic Beverages Prohibited**

(a)(1) It is the duty of any person having control of any *premises*, who knowingly hosts, permits, or allows a *gathering* at said *premises* to take all reasonable steps to prevent the consumption of *alcoholic beverages* by any *minor* at the *gathering*. Reasonable steps are controlling access to

alcoholic beverages at the *gathering*; controlling the quantity of *alcoholic beverages* present at the *gathering*; verifying the age of persons attending the *gathering* by inspecting drivers licenses or other government-issued identification cards to ensure that *minors* do not consume *alcoholic beverages* while at the *gathering*; and supervising the activities of *minors* at the *gathering*.

- (2) It is unlawful for any person having control of any *premises* to knowingly host, permit, or allow a *gathering* to take place at said *premises* where at least one *minor* consumes an *alcoholic beverage*, whenever the person having control of the *premises* either knows a *minor* has consumed an *alcoholic beverage* or reasonably should have known that a *minor* consumed an *alcoholic beverage* had the person taken all reasonable steps to prevent the consumption of an *alcoholic beverage* by a *minor* as set forth in subsection (a)(1) of this Section.
- (b) This Section shall not apply to conduct involving the use of *alcoholic beverages* that occurs exclusively between a *minor* and his or her *parent* or *legal guardian*, as permitted by Article I, Section 4, of the California Constitution.
- (c) This Section shall not apply to any California Department of Alcoholic Beverage Control licensee at any *premises* regulated by the Department of Alcoholic Beverage Control.

§56.63 Mandatory Minimum Fines

Criminal violations of Sections 56.61 and 56.62 shall be punishable, on a first offense, by a mandatory minimum fine of \$100.00, plus statutory penalty assessments, with neither fine nor assessments stayed or suspended, and, on second and subsequent offenses, by a fine of \$200.00, plus statutory penalty assessments, with neither fine nor assessments stayed or suspended.

Section 2. That Chapter 5, Article 6 of the San Diego Municipal Code is further amended by adding Sections 56.64 and 56.65 to read as follows:

§56.64 Reservation of Legal Options

Violations of Sections 56.61 and 56.62 may be prosecuted by the City of San Diego, in the name of the People of the State of California, criminally, civilly, and/or administratively as provided by the Municipal Code. The City of San Diego may seek administrative fees and *response costs* associated with enforcement of Sections 56.61 and 56.62, through all remedies or procedures provided by statute, ordinance, or law. Sections 56.61 and 56.62 shall not limit the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by Sections 56.61 and 56.62, nor shall they limit the City of San Diego's or the People of the State of California's ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of Sections 56.61 and 56.62.

§56.65 Local Authority

Sections 56.60, 56.61, 56.62, 56.63, and 56.64 shall not apply where prohibited or preempted by state or federal law.

Section 3. That a full reading of this Ordinance is dispensed with prior to its final passage, since a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. This Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Joan F. Dawson
Deputy City Attorney

JFD:sc
02/09/06
Aud.Cert.:N/A
Or.Dept:PD
O-2006-90

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

City of Baltimore

§ 11-207. Alcoholic beverage advertising signs.

(a) "Licensed premises" defined.

In this section, "licensed premises" means a premises that operates under an alcoholic beverages license or permit issued under State Code Article 2B.

ZONING ZG § 11-207

06/30/06 -297-

(b) General prohibition.

No person may place any sign, poster, placard, device, graphic display, or other item that advertises alcoholic beverages in any publicly visible location, including any outdoor billboard,

side of a building, or freestanding signboard.

(c) Exceptions.

This section does not apply to:

(1) the placement of signs, including advertisements:

(i) inside a licensed premises;

(ii) on commercial vehicles used for transporting alcoholic beverages; or

(iii) in conjunction with a temporary license or a 1-day alcoholic beverages license granted by the Board of License Commissioners;

(2) any sign that contains the name or slogan of a licensed premises and that has been placed

for the purpose of identifying the licensed premises;

(3) except for billboards and freestanding signboards, any sign for which Zoning Board approval or a minor privilege permit is required and has been obtained;

(4) any sign that refers to beer, wine, liquor, spirits, or other alcoholic beverages solely by

way of generic description;

(5) any neon or electrically charged sign that is on a licensed premises and has been provided

as part of a promotion of a particular brand of alcoholic beverage;

(6) any sign on a Maryland Transit Authority vehicle or on a taxicab;

(7) any sign on property owned, leased, or operated by the Maryland Stadium Authority;

(8) any sign at a facility that operates in accordance with a license issued under § 11-304 of

the State Business Regulation Article;

(9) any sign on property adjacent to an interstate highway; or

(10) any sign located:

(i) in a B-4 District;

(ii) in an M-3 District, if the sign is more than 1,000 feet from the boundary of any other district that is not a B-4 or M-3 District; or

(iii) in an M-3 District, if the sign is more than 500 feet from the boundary of any other district that is not a B-4 or M-3 District and the sign faces away from that other district.

(City Code, 1976/83, art. 30, §10.0-1h.) (Ord. 99-547.)

City of Baltimore

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This section does not apply to:

(1) the placement of signs, including advertisements:

(i) inside a licensed premises;

(ii) on commercial vehicles used for transporting alcoholic beverages; or

(iii) in conjunction with a temporary license or a 1-day alcoholic beverages license granted by the Board of License Commissioners;

(2) any sign that contains the name or slogan of a licensed premises and that has been placed for the purpose of identifying the licensed premises;

(3) except for billboards and freestanding signboards, any sign for which Zoning Board approval or a minor privilege permit is required and has been obtained;

(4) any sign that refers to beer, wine, liquor, spirits, or other alcoholic beverages solely by way of generic description;

(5) any neon or electrically charged sign that is on a licensed premises and has been provided as part of a promotion of a particular brand of alcoholic beverage;

(6) any sign on a Maryland Transit Authority vehicle or on a taxicab;

(7) any sign on property owned, leased, or operated by the Maryland Stadium Authority;

(8) any sign at a facility that operates in accordance with a license issued under § 11-304 of the State Business Regulation Article;

(9) any sign on property adjacent to an interstate highway; or

(10) any sign located:

(i) in a B-4 District;

(ii) in an M-3 District, if the sign is more than 1,000 feet from the boundary of any other district that is not a B-4 or M-3 District; or

(iii) in an M-3 District, if the sign is more than 500 feet from the boundary of any other district that is not a B-4 or M-3 District and the sign faces away from that other district.

(City Code, 1976/83, art. 30, §10.0-1h.) (Ord. 99-547.)

§ 17-508. Alcoholic beverage advertising signs: \$1,000.

For violating any provision of § 11-207 {"Alcoholic beverage advertising signs"} of this article, the

penalty is a fine of not more than \$1,000 for each offense.

(City Code, 1976/83, art. 30, §11.0-7a(3rd cl.)) (Ord. 99-547.)

Article 8: Minors

Division 5: Restricting the Advertising of Alcoholic Beverages to Youth
("Restricting the Advertising of Alcoholic Beverages to Youth"
added 11-14-2000 by O-18879 N.S.)

§58.0501 Definitions

All terms defined in this Division appear in italics.

For purposes of this Division:

Advertising means printed matter that calls the public's attention to things for sale.

Alcoholic beverages means any substance containing one-half of one percent or more alcohol by volume and which is fit for consumption as a beverage either alone or when combined with other substances.

Billboard means any sign space that is permanently placed on or affixed to the ground, the sidewalk, a pole or post, or a building, and is not appurtenant to the use of the property, a product sold, or the sale or lease of the property on which displayed and which does not identify the place of business as purveyor of the merchandise or services advertised upon the sign. *Billboard* also means any sign space that is permanently placed on a vehicle that is used primarily for the purpose of displaying outdoor advertising.

Child care center means a public or licensed private child care that has a continuous enrollment of no fewer than twenty-five (25) children and is clearly identified on the outside of the facility as a childcare center;

City has the same meaning as in Municipal Code section 11.0210.

Director has the same meaning as in Municipal Code section 11.0210.

Library means any public library operated by the *City* and clearly identified on the outside of the facility as a library.

Person has the same meaning as in Municipal Code section 11.0210.

Playground means any outdoor premises or grounds owned or operated by the *City* that contains any play or athletic equipment used or intended to be used by minors.

Recreation center or facility means any recreation center or facility owned or operated by the *City*, and clearly identified on the outside of the facility as a *City* recreation center or facility.

School means any public or licensed private elementary or secondary school, that is clearly identified on the outside of the facility as a school, attendance at which satisfies the compulsory education laws of the State of California.
(“Definitions” amended 5-6-2003 by O-19173 N.S.)

§58.0502 Measure of Distance

The distance between any *billboard* and any *school, playground, recreation center or facility, child care center, or library* shall be measured in a straight line, without regard to intervening structures, from the *billboard* to the closest property line of the *school, playground, recreation center or facility, child care center, or library*.
(Amended 5-6-2003 by O-19173 N.S.)

§58.0503 Advertising Restrictions

It is unlawful for any *person, business, or retailer* to place or maintain, or cause to be placed or maintained, any *advertising of alcoholic beverages* on a *billboard* that is within 500 feet of a *school, playground, recreation center or facility, child care center, or library* or that is more than 500 feet and the billboard face and its advertisement are clearly visible from a *school, playground, recreation center or facility, child care center, or library*. This section does not apply to any noncommercial message.
(Amended 5-6-2003 by O-19173 N.S.)

§58.0504 Enforcement

Violations of this Division shall be prosecuted as infractions for the first offense, and may be prosecuted as misdemeanors for subsequent offenses, subject to the fines and custody provided in Municipal Code Section 12.0201. Any *Director* may also seek injunctive relief and civil penalties pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy as provided in Chapter 1 of this Code.
(Amended 5-6-2003 by O-19173 N.S.)

Title 14 SIGNS

Chapter 14.04 OAKLAND SIGN CODE

14.04.010 Title—Uniform Sign Code.

14.04.020 Changes, additions and deletions.

14.04.030 Section 101 amended.

14.04.040 Section 102 amended.

14.04.050 Section 103(c) amended.

14.04.060 Section 103(d) amended.

14.04.070 Section 202 amended.

14.04.080 Section 206.1 added.

14.04.090 Section 207.1 added.

14.04.100 Section 212 amended.

14.04.110 Section 215 amended.

14.04.120 Section 304 amended.

14.04.130 Section 307 added.

14.04.140 Section 401(c) amended.

14.04.150 Section 402(a) amended.

14.04.160 Section 402(c) amended.

14.04.170 Section 403(a) amended.

14.04.180 Section 403(d) amended.

14.04.190 Section 503(b) amended.

14.04.200 Section 803(b) amended.

14.04.210 Section 903 amended.

14.04.220 Section 1003(b) amended.

14.04.230 Section 1103(b) amended.

14.04.240 Table 4-B amended.

14.04.250 Table 4-C deleted.

14.04.260 Section 1302 amended.

14.04.270 Chapter 15 added.

14.04.280 Chapter 16 added.

14.04.290 Violations and penalties.

14.04.010 Title--Uniform Sign Code.

A. This title shall be known as the "Oakland Sign Code," may be cited as such, and will be referred to herein as "this title" or "this code."

B. The Uniform Sign Code, Copyright 1976 by International Conference of Building Officials, copies of which have been placed on file with the City Clerk for use and examination by the public and by Resolution No. 56311 C.M.S. declared to be public records, as the Uniform Sign Code has been deleted, changed and supplemented with approval of this Council, and each and all of the regulations, provisions, conditions, requirements and terms thereof are adopted as Oakland sign code for regulating the design, quality of materials, construction, location, electrification, and maintenance of all sign and sign structures not located within a building in the city of Oakland, and by this reference is incorporated herein and made a part hereof to the same effect as though set forth herein in full. (Ord. 9468 § 1, 1977)

14.04.020 Changes, additions and deletions.

The changes, additions and deletions in the copies of the Uniform Sign Code placed on file with the City Clerk, hereinafter set forth and designated, are approved and adopted. (Ord. 9468 § 2 (part), 1977)

14.04.030 Section 101 amended.

Section 101 is changed to read as follows:

Sec. 101. This Ordinance shall be known as the Oakland Sign Code, may be cited as such, and will be referred to herein as "this Ordinance" or "this Code." Where reference is made to the Uniform Building Code, it shall mean the Oakland Building Code.

(Ord. 9468 § 2 (part), 1977)

14.04.040 Section 102 amended.

The third paragraph of Section 102 is amended to read as follows:

The regulations of this Code are not intended to permit any violation of the provisions of any other lawful City ordinance, or State or Federal law.

(Ord. 9468 § 2 (part), 1977)

14.04.050 Section 103(c) amended.

Section 103(c) is changed to read as follows:

Sec. 103(c). Appeals. The Board of Examiners and Appeals created by virtue of Section 204 of the Oakland Building Code shall have the same powers and exercise the same function with respect to the Oakland Sign Code as it presently has and exercises with respect to the Oakland Building Code.

(Ord. 9468 § 2 (part), 1977)

14.04.060 Section 103(d) amended.

Section 103(d) is changed to read as follows:

SECTION 103(d). VIOLATIONS AND PENALTIES

- a. It shall be unlawful for any person, firm or corporation to construct, locate, electrify, or maintain any sign or sign structure in the City or cause the same to be done contrary to or in violation of any of the provisions of this code.
- b. Any person, firm or corporation violating any provisions of this code shall be deemed guilty of an infraction unless otherwise provided in this Code.
- c. Each, person, firm or corporation shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall be punishable accordingly.
- d. In addition to the penalties here and above provided, any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be by the City of Oakland summarily abated as such.
- e. Any person convicted of an infraction under the provisions of this code shall be punishable upon a first conviction of a fine of not more than \$50.00, and for a second conviction within a period of one year by a fine of not more than \$100.00, and for a third or any subsequent conviction within a one year period by a fine of not more than \$250.00. Any violation beyond the third conviction within a one year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than \$500.00 or by imprisonment in the county jail for a period of not more than six months or by both.
- f. 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.
- g. Pursuant to section 836.5 of the California Penal Code, the Chief Building Inspector or his authorized representatives are hereby authorized to enforce this Code and arrest violators thereof.
- h. The City Manager shall have the power to designate by written order that particular officers or employees shall be authorized to enforce particular provisions of this code in addition to those officers enumerated in subsection g. Officers or employees so designated shall have the authority to arrest persons who violate any of said provisions.

(Ord. 10443 § B, 1984; Ord. 9468 § 2 (part), 1977)

14.04.070 Section 202 amended.

Section 202 is changed to read as follows:

Sec. 202. ADVERTISING SIGN is any sign, poster, placard, device, graphic display, or any other form of advertising promoting the sale of a commodity which is not sold, produced, conducted, or offered by any activity on the same lot.

(Ord. 12085 § 1, 1998; Ord. 12025 § 2, 1997)

14.04.080 Section 206.1 added.

Section 206.1 is added to read as follows:

Sec. 206.1. Freeway. The term "Freeway" shall be deemed to mean a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access, and which is declared to be such in compliance with the Streets and Highways Code of the State of California.

(Ord. 9468 § 2 (part), 1977)

14.04.090 Section 207.1 added.

Section 207.1 is added to read as follows:

Fire-Retardant Treated Wood is lumber or plywood impregnated with chemicals and when tested in accordance with U.B.C. Standard No. 42-1 for a period of 30 minutes, shall have a flame spread of not over 25 and show no evidence of progressive combustion. Materials which may be exposed to the weather shall maintain this fire-retardant classification when tested in accordance with the rain and weathering tests of U.B.C. Standard No. 32-7.

All materials shall bear identification showing the fire performance rating thereof and, if intended for exterior use, shall be further identified to indicate suitability for exposure to the weather. Such identifications shall be issued by an approved agency having a service for inspection of materials at the factory.

(Ord. 9468 § 2 (part), 1977)

14.04.100 Section 212 amended.

Section 212 is amended to add:

PERSON is any individual, firm, organization, corporation, partnership, cooperative, association, receiver, trustee, assigns, public or private entity, or other legal entity.

PUBLICLY VISIBLE LOCATION is any location that is open to or visible to the public from any street, sidewalk, or other public thoroughfare, and shall include the placement of outdoor signs such as billboards, signs attached to the sides of buildings, signs attached to poles, posts or other figures, and freestanding signboards on the sidewalk.

(Ord. 12025 § 3, 1997)

14.04.110 Section 215 amended.

Section 215 is amended to add:

Sec. 215. TOBACCO PRODUCTS are any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipes, tobacco, snuff, chewing tobacco and dipping tobacco; cigarette papers; or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance.

(Ord. 12025 § 4, 1997)

14.04.120 Section 304 amended.

Section 304 is changed to read as follows:

Sec. 304. Checking Fees and Permit Fees. A checking fee and permit fee for each sign permit shall be paid to the Building Official. Such fees shall be established by the Master Fee Schedule.

A determination of valuation under any of the provisions of this Code shall be made by the Building Official.

Where work for which a permit is required by this Code is started or proceeded with prior to obtaining said permit, the fees established by the Master Fee Schedule shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of this Code in the execution of the work nor from any other penalties prescribed herein.

(Ord. 9468 § 2 (part), 1977)

14.04.130 Section 307 added.

Section 307 is added to read as follows:

Sec. 307. Expiration. Every sign permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 120 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 120 days. Before such work can be recommenced, a new permit shall first be obtained so to do and the fee therefor shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided, further, that such suspension or abandonment has not exceeded one year.

(Ord. 9468 § 2 (part), 1977)

14.04.140 Section 401(c) amended.

The title and first paragraph of Section 401(e) are changed to read as follows:

Sec. 401(e). Allowable Stresses; Structural Design. Structural design shall conform to the requirements of the Oakland Building Code.

(Ord. 9468 § 2 (part), 1977)

14.04.150 Section 402(a) amended.

Section 402(a) is amended to add:

Lights used for illuminating signs not herein classified as electric signs may extend over the sidewalk for a distance not to exceed four (4) feet beyond the property line, provided such lights are installed with a vertical clearance of at least ten (10) feet above the sidewalk.

(Ord. 9468 § 2 (part), 1977)

14.04.160 Section 402(c) amended.

Section 402(c) is changed to read as follows:

Sec. 402(c). Restrictions on Combustible Materials. All signs and sign structures erected in Fire Zone No. 1 shall have structural members of non-combustible material.

Ground signs may be constructed of any material meeting the requirements of this Code, except as provided above.

Combination signs, roof signs, wall signs more than sixteen (16) square feet, and signs on marquees shall be constructed of noncombustible materials, except as provided in subsection (d) of this Section. No combustible materials other than approved plastics shall be used in the construction of electric signs.

EXCEPTION: Use of fire-retardant treated wood or other alternate methods or materials may be substituted for non-combustible materials in non-electric signs only, when approved by Building Official and Fire Marshal.

(Ord. 9468 § 2 (part), 1977)

14.04.170 Section 403(a) amended.

Section 403(a) is changed by deletion of the words "and No. 4-C." (Ord. 9468 § 2 (part), 1977)

14.04.180 Section 403(d) amended.

Section 403(d) is changed to read as follows:

Sec. 403(d). Obstruction of Openings. No sign shall obstruct any opening to such an extent that light or ventilation is reduced to a point below that required by any law or ordinance.

(Ord. 9468 § 2 (part), 1977)

14.04.190 Section 503(b) amended.

Section 503(b) is changed to read as follows:

Sec. 503(b). Thickness. The thickness of that portion of a fin sign which projects over public property shall not exceed a maximum of three feet (3').

(Ord. 9468 § 2 (part), 1977)

14.04.200 Section 803(b) amended.

Section 803(b) is changed to read as follows:

Sec. 803(b). Clearance and Access. Roof signs exceeding five feet (5') in height shall have vertical clearance above the roof directly beneath not less than five feet (5') with vertical supports at least six feet (6') apart. No less than fifty percent (50%) of the spaces so defined shall be and remain clear of obstruction. The face of such sign shall be set back at least three feet (3') from the inside of the parapet, or wall adjacent thereto, and the ends of the sign shall be not less than one foot (1') inside the inside face of the parapet or wall adjacent to such end.

(Ord. 9468 § 2 (part), 1977)

14.04.210 Section 903 amended.

Section 903 is changed to read as follows:

Sec. 903. No wall sign shall have a projection over public property greater than the distances set forth in Table No. 4-B, except that working platforms for the servicing and maintenance of such signs may extend a distance not to exceed thirty-six (36") inches if not less than fourteen feet (14') above the sidewalk.

Wall signs not exceeding one-third (1/3) the length of the wall on which attached may extend a maximum of six feet (6') above the top of the wall.

(Ord. 9468 § 2 (part), 1977)

14.04.220 Section 1003(b) amended.

Section 1003(b) is changed to read as follows:

Sec. 1003(b). Thickness. The thickness of a projecting sign shall not exceed three feet (3').

(Ord. 9468 § 2 (part), 1977)

14.04.230 Section 1103(b) amended.

Section 1103(b) is changed to read as follows:

Sec. 1103(b). Thickness. The thickness of that portion of a combination sign which projects over public property shall not exceed a maximum of three feet (3').

(Ord. 9468 § 2 (part), 1977)

14.04.240 Table 4-B amended.

Table 4-B, Projection of signs, is changed to read as follows:

**Table 4-B
Projection of Signs**

Clearance	Maximum Projection
Less than 7'	Not permitted
7' to 9'	1'
9' to 10'	2' (Maximum for all wall signs)
Over 10'	8'

(Ord. 9468 § 2 (part), 1977)

14.04.250 Table 4-C deleted.

Table 4-C, Thickness of projecting sign, is deleted. (Ord. 9468 § 2 (part), 1977)

14.04.260 Section 1302 amended.

Section 1302 is changed to read as follows:

Sec. 1302(a). Construction and Installation. Electric signs shall be constructed and installed in accordance with the requirements of the Electrical Ordinance of the City of Oakland (Chapter 9 of the Oakland Municipal Code) and the rules and regulations prescribed and established pursuant thereto (Electrical Code).

(b). Erector's Name. Every electric sign shall have placed within easy view the following information:

1. Name of sign erector
2. Date of erection
3. Electrical power consumption (in amperes)
4. Lamp complement

Such information shall be in sufficient size and contrast to be readable from a reasonable distance. Failure to provide such information shall be grounds for rejection of the sign by the Building Official.

(Ord. 9468 § 2 (part), 1977)

14.04.270 Chapter 15 added.

Chapter 15 is added to read as follows:

**CHAPTER 15
SIGNS ADJACENT TO FREEWAYS**

Sec. 1501. Signs Prohibited Adjacent to Freeways. No sign shall be erected, constructed, relocated or maintained in the City of Oakland if such sign is designed to have or has the advertising thereon maintained primarily to be viewed from a freeway, provided that the provisions of this section shall not apply to any sign constructed, painted or maintained on which the advertising is limited to one or all of the following:

1. The name of the person, firm or corporation occupying the premises and the type of business conducted by such person, firm or corporation.
2. The name of the product manufactured on the premises.
3. A sign not exceeding six square feet in area appertaining only to the lease, hire, sale, or display of the building or premises.
4. Time and temperature units.
5. New, relocated or wholly reconstructed advertising signs in the M-40 Heavy Industrial Zone as part

of a billboard relocation agreement authorized by the City of Oakland or Oakland Redevelopment Agency prior to November 18, 1997 provided further that the restrictions contained in Ordinance No. 12025 C.M.S., as amended by Ordinance No. 12085 C.M.S., shall apply so that there shall be no increase in the number of billboard faces allowed to promote the sale of Tobacco Products or Alcoholic Beverages, regardless of the location of said billboard faces.

6. Relocated or wholly reconstructed advertising signs pursuant to a franchise agreement or relocation agreement authorized by the City Council, which expressly allows advertising signs and then only under the terms and conditions of such agreements.

Sec. 1502. Existing Signs Not Conforming to Sec. 1501. Any sign which does not conform to the provisions of Sec. 1501, but which conformed to the rules and regulations in effect at the time of its erection, shall be deemed a nonconforming sign and may exist, except that:

(a) Within three years from the effective date of the rule or regulation rendering such sign illegal; or within three years from the date of a freeway, or portion thereof, is opened to public travel; or, as to any such sign which is being maintained pursuant to the terms of a written lease with a sign company, within the term of said lease or within five years from the vacation or change of occupancy of the premises upon which said sign is located, whichever date shall occur first; all such nonconforming signs shall be removed, or shall be rearranged or relocated so as to eliminate any conflict with the provisions of said section; provided, however, that any existing sign which has been permitted by a variance granted by the City Council, prior to the adoption of these provisions, shall not be required to be so removed, rearranged, or relocated until within three years from the date of a freeway, or portion thereof, from which such sign is viewed, has been landscaped. For the purposes of this section, a landscaped freeway shall be deemed to mean a section or sections of a freeway which has or have been improved by the planting, on at least one side of the freeway right-of-way, of lawns, trees, shrubs, flowers, or other ornamental vegetation which shall require reasonable maintenance. Planting for the purpose of soil erosion control, traffic safety requirements, reduction of fire hazards, or traffic noise abatement, shall not change the character of a freeway to a landscaped free-way. The Building Official and Director of City Planning and Traffic Engineer shall determine by a majority decision whether any sign is nonconforming as herein provided.

(b) No such nonconforming sign shall be altered, reconstructed, or relocated unless the same when so altered, reconstructed or relocated will not be in conflict with any of the provisions and will conform with all the requirements of Section 1501.

For the purposes of this section only, the terms "altered", "reconstructed" or "maintained" shall not include normal maintenance; changing of the surface sign space, ornamental moulding, pilasters or ornamental features below the base line; or the addition, construction, installation or changing of electrical wiring or electrical devices, backgrounds, letters, figures, characters, or representation in cutout or irregular form.

Sec. 1503. Signs Constituting Hazard to Freeway Traffic. No sign constructed, painted or maintained on any building which is permitted by Sections 1501 and 1502 of this Code shall be permitted in any event if it, because of its location, size, nature or type constitutes or tends to constitute a hazard to the safe and efficient operation of vehicles upon a freeway, or creates a condition which endangers the safety of persons or property thereon.

Sec. 1504. Statement in Application. Every application for a sign shall contain a statement by the applicant that said sign is not designed to have or has the advertising thereon maintained primarily to be viewed from a freeway, or that if said sign is so designed it falls within one or more of the exceptions provided for in Section 1501.

Sec. 1505. Consideration of Application by Building Official, Traffic Engineer and Director of City Planning. Every application for a sign shall be considered by the Building Official, Traffic Engineer and Director of City Planning for the purpose of determining whether or not the proposed sign falls within the prohibitions of Section 1501 or Section 1503. This determination shall be by a majority decision.

Sec. 1506. Appeal to City Council. Any person aggrieved by the decision of the Building Official, Traffic Engineer and Director of City Planning made pursuant to the provisions of Sections 1502, 1503 and 1505 may appeal to the City Council. The appeal shall be filed with the City Clerk within ten days from the date of decision. The Clerk shall, with the approval of the Council, set the time and place of hearing, and give notice thereof to all interested parties. The Council shall fully advise itself in the premises and render its decision affirming, modifying, or reversing the determination of the Building Official, Traffic Engineer, and Director of City Planning. The Council's decision shall be final.

(Ord. 12425 § 3, 2002; Ord. 12234 § 5, 2000; Ord. 9468 § 2 (part), 1977)

14.04.280 Chapter 16 added.

Chapter 16 is added to read as follows:

Chapter 16

RESTRICTING THE PLACEMENT OF OUTDOOR ADVERTISEMENTS FOR ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS AND ESTABLISHING ENFORCEMENT PROCESSES

Purpose

Sec. 1601. The primary purpose of this Section is to promote the general welfare and reduce illegal consumption and purchase of Alcoholic Beverages and Tobacco Products by minors. This is accomplished by limiting the exposure of minors to Publicly Visible Advertisements of Alcoholic Beverages and Tobacco Products.

Restrictions

Sec. 1602. Outdoor Advertising of Alcoholic Beverages or Tobacco Products. No Person may place any Advertising Sign promoting the sale of Alcoholic Beverages or Tobacco Products in Publicly Visible Locations.

Exceptions

Sec. 1603. Exceptions.

(a) The provisions of Section 1602 shall not apply to:

1. Any sign located on a property designated with one of the following General Plan Land Use categories:

Business Mix

General Industrial/Transportation

Mixed Use Waterfront/Estuary Plan Area

Regional Commercial

And that portion of the Central Business District, bound by Castro Street, 11th Street, Franklin Street, 13th Street, Harrison Street, Grand Avenue, Telegraph Avenue, Broadway, 14th Street to Castro Street.

Except that no alcohol or tobacco Advertising Sign in these areas shall face into other adjoining land use designations and that no alcohol or tobacco Advertising Sign shall be placed within 1,000 ft. of schools, City-owned youth recreation centers, licensed child care facilities, places of worship, and Raimondi Field.

2. The placement of Signs: (a) inside premises that lawfully sell Alcoholic Beverages or Tobacco Products, including without limitation, any neon or electrically charged Sign that is provided as part of a promotion of a particular brand of product; (b) on commercial vehicles used for transporting Alcoholic Beverages or Tobacco Products; or (c) in conjunction with a one-day Alcoholic Beverage sales license or temporary license issued by the California Department of Alcoholic Beverage Control;

3. Any Sign that contains the name or slogan of a business that sells Alcoholic Beverages or Tobacco Products that has been placed for the purpose of identifying the business;

4. Any Advertising Sign that does not refer to a specific brand of Alcoholic Beverages or Tobacco Products;

5. Any Advertising Sign on a taxicab;

6. Any Advertising Sign adjacent to and facing an interstate highway.

(b) This section shall not be construed to permit any Advertising Sign that is otherwise restricted or prohibited by law.

Public Service Advertising

Sec. 1604. Construction. This Chapter shall be construed to apply only to Commercial Speech.

Sec. 1605. Administrative Enforcement. Any person who violates, disobeys, omits, neglects, refuses to comply with, or resists the enforcement of any of the provisions of this ordinance shall be subject to procedures contained in the Municipal Code Chapter 1.08; Chapter 1.12; and Chapter 1.16.

Sec. 1606. Administrative Penalties. When an Authorized Enforcement Official finds that a violation of this Chapter has taken place or is likely to take place, the Enforcement Official may assess: a) civil penalties pursuant to the standards and procedures established in Chapter 1.08 of the Oakland Municipal Code; b) administrative citations pursuant to the standards and procedures established in Chapter 1.12 of the Oakland Municipal Code; and/or c) property use limitations pursuant to the standards and procedures established in Chapter 1.16 of the Oakland Municipal Code; and any amendments or revisions thereto.

Sec. 1610. Civil Actions. In addition to other remedies provided in this Chapter, any violation of this Chapter may be enforced by a civil action brought by the City. In such action, the City may seek, and the Court shall grant, as appropriate, any or all of the following remedies:

- a) A temporary and/or permanent injunction;
- b) Assessment of the violator for costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for reasonable costs of preparing and bringing legal action under this subsection, including but not limited to attorney compensation;
- c) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.

Sec. 1611. Continuing Violation. Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this Chapter is committed, continued or permitted by the person and shall be punishable accordingly as herein provided.

Sec. 1612. Concealment. Causing, permitting, aiding, abetting or concealing a violation of any provision of this Chapter shall constitute a violation of such provision.

Reinspection Fees

Sec. 1613. Reinspection Fees. Whenever an Authorized Enforcement Official determines that upon reinspection of the premises there has been a failure to comply with any orders, notices or directions of the City, the Enforcement Official may charge a reinspection fee.

Remedies Not Exclusive

Sec. 1614. Remedies Not Exclusive. Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The Enforcement Official shall have the discretion to select a particular remedy to further the purposes and intent of the Chapter, depending on the particular circumstances. The Enforcement Official's decision to select a particular remedy is not subject to appeal.

Joint and Several Liability

Sec. 1615. Joint and Several Liability. The property owner and the Advertising Sign owner/operator shall be jointly and severally liable for violations of this Chapter.

Disclaimers

Sec. 1616. Disclaimers. By prohibiting the advertising or promotion of alcoholic beverages and tobacco products in outdoor or publicly visible locations, the City of Oakland is assuming an undertaking only to promote the general welfare by discouraging and reducing the illegal purchase and consumption of alcoholic beverages and tobacco products to minors. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Severability and Validity

Sec. 1617. Severability and Validity. If any portion of this Chapter or the application thereof to any person or circumstances is declared invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Chapter and the application of such portions to other persons or circumstances are to be considered valid. To this end, the provisions of this Chapter are severable.

(Ord. 12085 §§ 2–4, 1998; Ord. 12025 § 5, 1997)

14.04.290 Violations and penalties.

A. It is unlawful for any person, firm or corporation to construct, locate, electrify, or maintain any sign or sign structure in the city or cause the same to be done contrary to or in violation of any of the provisions of this code.

B. Any person, firm or corporation violating any provisions of this code shall be deemed guilty of an infraction unless otherwise provided in this code.

C. Each, person, firm or corporation shall be guilty of a separate offense for each and every day during any portion of which any violation of any of any provision of this code is committed, continued or permitted by such person and shall be punishable accordingly.

D. In addition to the penalties here and above provided, any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be by the city of Oakland summarily abated as such.

E. Any person convicted of an infraction under the provision of the code shall be punishable upon a first conviction by a fine of not more than one hundred dollars (\$100.00) and, for a second conviction within a period of one year, by a fine of not more than two hundred dollars (\$200.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five hundred dollars (\$500.00). Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the County Jail for a period of not more than six months or by both.

F. 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.

G. Pursuant to section 836.5 of the California Penal Code, the Chief Building Inspector or his authorized representatives are authorized to enforce this Code and arrest violators thereof.

H. The City Manager shall have the power to designate by written order that particular officers or employees shall be authorized to enforce particular provisions of this code in addition to those officers enumerated in subsection G of this section. Officers or employees so designated shall have the authority to arrest persons who violate any of the provisions. (Ord. 11002 § 1, 1988; Ord. 10443 (part), 1984: 9468 § 5, 1977)

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Recreation center or facility means any recreation center or facility owned or operated by the City, and clearly identified on the outside of the facility as a City recreation center or facility.

School means any public or licensed private elementary or secondary school, that is clearly identified on the outside of the facility as a school, attendance at which satisfies the compulsory education laws of the State of California.
(“Definitions” amended 5-6-2003 by O-19173 N.S.)

§58.0502 Measure of Distance

The distance between any *billboard* and any *school, playground, recreation center or facility, child care center, or library* shall be measured in a straight line, without regard to intervening structures, from the *billboard* to the closest property line of the *school, playground, recreation center or facility, child care center, or library*.
(Amended 5-6-2003 by O-19173 N.S.)

§58.0503 Advertising Restrictions

It is unlawful for any *person, business, or retailer* to place or maintain, or cause to be placed or maintained, any *advertising of alcoholic beverages* on a *billboard* that is within 500 feet of a *school, playground, recreation center or facility, child care center, or library* or that is more than 500 feet and the billboard face and its advertisement are clearly visible from a *school, playground, recreation center or facility, child care center, or library*. This section does not apply to any noncommercial message.
(Amended 5-6-2003 by O-19173 N.S.)

§58.0504 Enforcement

Violations of this Division shall be prosecuted as infractions for the first offense, and may be prosecuted as misdemeanors for subsequent offenses, subject to the fines and custody provided in Municipal Code Section 12.0201. Any *Director* may also seek injunctive relief and civil penalties pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy as provided in Chapter 1 of this Code.
(Amended 5-6-2003 by O-19173 N.S.)

ORDINANCE NO. 3444

**ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS
PROHIBITING ALCOHOL BEVERAGE SPONSORSHIP AND ALCOHOL BEVERAGE
SPONSORSHIP SIGNS AT THE MARIN COUNTY FAIR**

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN HEREBY ORDAINS AS
FOLLOWS:

SECTION I. Chapter 6.09 of the Marin County Code is hereby added to read as
follows:

CHAPTER 6.09

**PROHIBITION OF ALCOHOL BEVERAGE SPONSORSHIP AND SPONSORSHIP
SIGNS OF ALCOHOLIC BEVERAGES AT THE MARIN COUNTY FAIR**

Sections:

6.09.010	Legislative Purpose
6.09.020	Legislative Findings
6.09.030	Definitions
6.09.040	Prohibition of Alcohol Beverage Sponsorship and Sponsorship Signs of Alcoholic Beverages at the Marin County Fair
6.09.050	Penalty for Violation
6.09.060	Severability
6.09.070	Effective Date

6.09.010 **Legislative Purpose**

The primary purposes of this ordinance are to promote the health, welfare and safety of persons under 21 years of age exposed to certain publicly visible sponsorship and sponsorship signage of alcoholic beverages and to project a wholesome, family-oriented image that does not promote the purchase or consumption of alcoholic beverages at the Marin County Fair by persons less than 21 years of age.

6.09.020 **Legislative Findings**

The Board of Supervisors of the County of Marin, after completing a legally noticed public hearing, finds the following:

- a) **WHEREAS**, Sections 25658 and 25658.5 of the State of California Business and Professions Code makes it unlawful for a person under the age of 21 years to purchase or attempt to purchase alcoholic beverages and makes it unlawful for any person to sell any alcoholic beverage to any person under the age of 21 years;
- b) **WHEREAS**, according to local, state and federal surveys, alcohol is overwhelmingly and consistently the most widely used drug at all adolescent age levels.¹ A child who begins alcohol use prior to age 14 is four times as likely to experience alcohol dependence than one who refrains from alcohol use until age 20 or older;²
- c) **WHEREAS**, the United States Supreme Court has recognized repeatedly that children deserve special solicitude because they lack the ability to assess and analyze fully the information presented through commercial media. Although much of the case law specifically deals with obscenity, it is clear that children deserve special solicitude on issues including alcohol advertising;³
- d) **WHEREAS**, the federal courts and independent studies have recognized that there is a positive relationship between both alcoholic beverage advertising and consumption of the advertised products;^{4, 5}
- e) **WHEREAS**, an extensive set of research studies supports the federal courts' judicial notice that alcoholic beverage advertising may predispose young people to drinking.⁶ These and other studies have shown that:
1. Male youth with greater exposure to alcohol advertisements in magazines, on television, and at sporting and music events are more aware of the advertising and more likely to remember the advertisements they had seen.⁷
 2. Youth who are more aware of televised beer advertisements hold more favorable views on drinking and express intentions to drink more often as adults than do children who are less aware of these ads;⁸
- f) **WHEREAS**, \$1.9 billion was spent on alcohol advertising in measured media (television, radio, print, outdoor, major newspapers and Sunday supplements) in 2002,⁹ and, working from alcohol company documents submitted to them, the Federal Trade Commission estimated in 1999 that the alcohol industry's total expenditures to promote alcohol (including through sponsorship, Internet advertising, point-of-sale materials, product placement, brand-logoed items and other means) were three or more times its expenditures for measured media advertising,¹⁰ suggesting that the alcohol industry spent a total of \$5.7 billion or more on advertising and promotion in 2002;
- g) **WHEREAS**, outdoor alcohol advertising, alcohol sponsorship, and alcohol sponsorship signs are unique and distinguishable types of product promotion and brand marketing that subject the public to involuntary and unavoidable forms of solicitation;¹¹

- h) **WHEREAS**, alcohol sponsorship and signage are permitted at certain events held in public places in the County of Marin including municipally sponsored events such as the Marin County Fair; persons under the age of 21 years attend events held in public areas, including municipality-sponsored events; sponsorship and signage at these events subject children attending these events to a high degree of involuntary and unavoidable forms of solicitation; sponsorship signs appear at events in public places in publicly visible locations, including, but not limited to, sides of tents, event stages, signs attached to poles, posts or other figures, and freestanding signboards. Sponsorship signs also appear at events in the form of logo-identified staff, stage sponsorship, and giveaways, and there is no practical way for parents to monitor or limit the exposure of their children to the **sponsorship** signs at these events; and, accordingly, children attending these events are inundated with sponsorship signs simply by attending the events;¹²
- i) **WHEREAS**, this ordinance *does not* attempt to enact such a blanket ban on advertising of alcohol as was prohibited in the U.S. Supreme Court case *44 Liquormart v. Rhode Island* and thus leaves advertisers with numerous alternative venues available to them, including but not limited to sponsorship of events on private property, television, radio, magazines, newspapers, and point-of-sale;
- j) **WHEREAS**, this ordinance only restricts the “time, place and manner” of alcoholic beverage sponsorship and sponsorship signs at the municipally-sponsored Marin County Fair, which is attended by a significant number of persons under the age of 21 years (estimated to be over 25,000 annually); it does not directly regulate the sale of alcohol and does not unduly burden legitimate business activities or persons licensed by the California Department of Alcoholic Beverage Control to sell alcoholic beverages;¹³
- k) **WHEREAS**, the County of Marin has made numerous and substantial efforts to enforce underage drinking laws; yet, despite these efforts, alcohol use by Marin County’s youth remains a serious problem in the County, contributing significantly to the incidence of adolescent crime, addiction, sexual assault, and driving after drinking;¹⁴
- l) **WHEREAS**, the County of Marin affirmatively opposes the acceptance of alcohol sponsorship and sponsorship signs in connection with the municipality-sponsored Marin County Fair, where persons under the age of 21 years are admitted;
- m) **WHEREAS**, Healthy Marin Partnership, Marin County Office of Education, Bay Area Community Resources, Marin County Drinking Driver Program and Communities Mobilizing for Change on Alcohol Program Youth Coalitions strongly endorse a restriction on alcohol industry sponsorship and alcohol industry sponsorship signs at the Marin County Fair as a means to promote consistent educational messages to children and to reduce youth alcohol-related problems;¹⁵ and

n) **WHEREAS**, the County of Marin Board of Supervisors therefore determines that this ordinance regulating alcohol beverage sponsorship and alcohol beverage sponsorship signs at the Marin County Fair is a reasonable and necessary means to protect and promote the health, safety, and general welfare of the youth of the County of Marin.

6.09.030 **Definitions**

- a. "Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.
- b. "Marin County Fair" means the annual Marin County Fair traditionally held over the 4th of July at the publicly-owned Marin County Fairgrounds located adjacent to the Marin County Civic Center in San Rafael, CA.
- c. "Member of the alcoholic beverage industry" includes licensed manufacturers, brewers, distillers, distributors, wholesalers, and sellers of alcoholic beverages.
- d. "Sponsorship" means a business arrangement between the County of Marin or an event organizer under contract with the County, on the one hand, and a member of the alcoholic beverage industry, on the other, whereby the member of the alcoholic beverage industry contributes funds, goods, or services to an event to be held at the Marin County Fair in return for recognition, acknowledgement, or other promotional consideration.
- e. "Sponsorship signs" means any manner of advertising, promotional, or sponsorship signage, or any representation, image, artwork, photograph, logo, graphic, device, display, regalia, insignia, indicia, design, slogan, trade name, brand name, product name, permittee or licensee name, advertising specialties, marketing services, or other materials of a member of the alcoholic beverage industry, indicating the participation of the member of the alcoholic beverage industry in the sponsorship of all or part of the Marin County Fair, including the sponsorship or naming of all or part of the event at the Marin County Fair, wherever located, whether indoor or outdoor.

6.09.040 **Prohibition of Alcohol Beverage Sponsorship and Sponsorship Signs of Alcoholic Beverages at the Marin County Fair**

- a. No member of the alcoholic beverage industry may sponsor the Marin County Fair, erect or cause to be erected any type of alcohol beverage sponsorship signs at the Marin County Fair.

6.09.050 Penalty for Violation

- a. Any person or business entity that violates any provision of this ordinance shall be guilty of an infraction and, upon a finding of such a violation by the County Administrative Officer or his/her designee, shall be subject to administrative assessment of civil penalties.
- b. Causing, permitting, aiding, abetting or concealing a violation of any provision of this ordinance shall constitute a violation of such provision.
- c. Each day of violation is a separate offense.
- d. Penalties for violations are as follows. First violation: \$500, with an additional \$50 per day for each day that the violation continues. Second violation: \$1,000, with an additional \$100 per day for each day the violation continues. Third and subsequent violations: \$2,000, with an additional \$200 per day for each day the violation continues.
- e. In addition to the other remedies provided in this Section, any violation of this ordinance may be enforced by a civil action brought by the County of Marin. In such action, County may seek, and the court shall grant, as appropriate, any or all of the following remedies:
 1. A temporary and/or permanent injunction;
 2. Assessment of the violator for costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, including but not limited to reasonable costs of preparing and bringing legal action under this subsection, and attorney fees;
 3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
 4. A finding, after two or more violations of this ordinance involving the same sponsorship sign, that the sponsorship sign constitutes a public nuisance.
- f. Other remedies as set forth in the County of Marin Zoning Code (Title 22) shall also apply to this ordinance, if applicable.
- g. A party found in violation has a right to seek a Writ of Mandamus and/or Prohibition to the Marin Superior Court in order to obtain review of a finding of violation.

6.09.060 Severability

If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this section, which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

ORDINANCE END NOTES

¹ California Healthy Kids Survey (2003/04); California Student Survey (2003/04); Youth Risk Behavior Survey (2003/04).

² Grant, B.F. "The Impact of a Family History of Alcoholism on the Relationship Between Age at Onset of Alcohol Use and DSM-IV Alcohol Dependence: Results from the National Longitudinal Alcohol Epidemiologic Survey," *NIAAA's Epidemiologic Bulletin No. 39. Volume 22, No. 2, 1998.*

³ *Denver Area Educ. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 746, 116 S.Ct. 2374, 2386, (1996) (plurality opinion) (upholding restrictions on programming imposed by the Cable Television Consumer Protection and Competition Act as a means of protecting children from indecent programming). In the context of the radio medium, the Court has approved extra restrictions on indecent speech because of the pervasiveness of the medium and the presence of children in the audience. See *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685, 106 S.Ct. 3159, 3165, (1986) (cited for the proposition that "[a] high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students"); *FCC v. Pacifica Foundation*, 438 U.S. 726, 750-51, 98 S.Ct. 3026, 3040-41 (1978) (comparing indecent speech during hours when children are listening to the proverbial pig in the parlor); see also *Action for Children's Television v. FCC*, 58 F.3d 654, 657 (D.C.Cir.1995) (upholding the Public Telecommunications Act against a First Amendment challenge based on the state's compelling interest in protecting minors), cert. denied, — U.S. —, 116 S.Ct. 701 (1996). Similarly, the Supreme Court has sustained a law that protected children from non-obscene literature. See *Ginsberg v. New York*, 390 U.S. 629, 639-40, 88 S.Ct. 1274, 1280-81 (1968). And, while it has acknowledged a right to private possession of adult pornography in the home, see *Stanley v. Georgia*, 394 U.S. 557, 566, 89 S.Ct. 1243, 1248-49 (1969), the Court has clearly distinguished child pornography and allowed a stronger legislative response "to destroy a market for the exploitative use of children." *Osborne v. Ohio*, 495 U.S. 103, 109, 110 S.Ct. 1691, 1696 (1990); see also *New York v. Ferber*, 458 U.S. 747, 759, 102 S.Ct. 3348, 3355-56 (1982). The underlying reason for the special solicitude of children was articulated long ago: "A democratic society rests, for its continuance, upon the healthy, well- rounded growth of young people into full maturity as citizens." *Prince v. Massachusetts*, 321 U.S. 158, 168, 64 S.Ct. 438, 443 (1944). See also, Memorandum to Board of Supervisors from Jack F. Govi, Assistant County Counsel, January 11, 2006 – "Legal Cases Referenced in Sponsorship Ordinance."

⁴ See, e.g., *Central Hudson Gas & Elec. v. Pub. Serv. Comm'n*, 447 U.S. 557, 569 (1980) regarding advertising and demand for electricity); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984) (regarding alcohol advertising and consumption); *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), cert. denied 117 S.Ct. 1569 (1997). See also, Memorandum to Board of Supervisors from Jack F. Govi, Assistant County Counsel, January 11, 2006 – "Legal Cases Referenced in Sponsorship Ordinance."

⁵ Hastings, G., Anderson, S., Cooke, E., Gordon, R. "Alcohol marketing and young people's drinking: A review of the research." *Journal of Public Health Policy*. 2005; 26: 296-311. Snyder, L.B., Milici, F., Slater, M., Sun, H., and Strizhakova, Y. "Effects of Alcohol Advertising on Drinking Among Youth." *Archive of Pediatrics & Adolescent Medicine-Volume 160 No.1, January 3, 2006.*

⁶ See, e.g., Grube, J., and Wallack, L. "Television beer advertising and drinking knowledge, beliefs, and intentions among schoolchildren." *American Journal of Public Health* 84:254-0, 1994; Grube, J. "Television Alcohol Portrayals, Alcohol Advertising, and Alcohol Expectancies Among Children and Adolescents." In Martin, S., ed., *The Effects of the Mass Media on the Use and Abuse of Alcohol*, Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Research Monograph No. 28, 1995,

pp. 105-21; Kusserow, R. "Youth and Alcohol: Controlling Alcohol Advertising That Appeals to Youth," *Washington, DC: Department of Health and Human Services, Office of Inspector General, OEI-09-01-00654, November 1991*; Slater, M., et al., "Male adolescents' reactions to TV beer advertisements: the effects of sports content and programming context," *Journal of Studies on Alcohol* 57: 425-33, 1996.

⁷ Collins, R.L., T. Schell, P.L. Ellickson, and D. McCaffrey, "Predictors of beer advertising awareness among eighth graders." *Addiction* 98: 1297-1306, 2003.

⁸ Grube, J., "Television Alcohol Portrayals, Alcohol Advertising, and Alcohol Expectancies Among Children and Adolescents." In Martin, S., ed., *The Effects of the Mass Media on the Use and Abuse of Alcohol*. Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Research Monograph No. 28, 1995, pp. 105-21.

⁹ Center on Alcohol Marketing and Youth – camy.org, "Youth Exposure to Alcohol Advertising," – Source: TNS Media Intelligence/CMR (Miller-Kaplan Associates).

¹⁰ Federal Trade Commission, Appendix B: "Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers." *Washington, DC: Federal Trade Commission, Appendix B, September, 1999*.

¹¹ *Packer Corp. v. Utah*, 285 U.S. 105, 110-111, 52 S.Ct. 273 (1931) (outdoor advertising); *Anheuser-Busch v. Schموke*, *supra*, 101 F.3d at 328 (outdoor advertising).). See also, Memorandum to Board of Supervisors from Jack F. Govi, Assistant County Counsel, January 11, 2006 – "Legal Cases Referenced in Sponsorship Ordinance."

¹² See *Anheuser-Busch v. Schموke*, *supra*, 101 F.3d at 328 (outdoor advertising). See also, Memorandum to Board of Supervisors from Jack F. Govi, Assistant County Counsel, January 11, 2006 – "Legal Cases Referenced in Sponsorship Ordinance."

¹³ Farley, Jim, Letter to Marin County Counsel, December 20, 2005.

¹⁴ Condon, Catherine, Memorandum to Marin County Board of Supervisors, December 28, 2005; "Efforts to Enforce Youth Access to Alcohol; Community Indicators of Alcohol and Drug Abuse Risk: Marin County (2004);" Marin County Division of Alcohol, Drug and Tobacco Programs. Prevention Plan for the Reduction of Binge Drinking and Related Community Problems Among Youth (2005)."

¹⁵ Letters of Support to Marin County Board of Supervisors: Healthy Marin Partnership - February 2, 2005; Marin County Office of Education - February 8, 2005; Bay Area Community Resources - February 8, 2005; Marin County Drinking Driver Program - February 23, 2005; Communities Mobilizing for Change on Alcohol Program Youth Coalitions - Three letters of support – all dated February 6, 2005.