



CITY COUNCIL

**Darryl Moore**  
Councilmember District 2

**CONSENT CALENDAR**

April 25, 2006

**TO:** Honorable Mayor and  
Members of the City Council

**FROM:** Councilmember Darryl Moore  
Councilmember Dona Spring

**SUBJECT:** Berkeley Alcohol Policy Advisory Coalition's (BAPAC) Proposal to Modernize Alcohol  
Outlet Policy

**RECOMMENDATION:**

Refer BAPAC's proposed ordinance to the City Manager for review by City staff. Schedule a presentation by BAPAC for the first Council meeting in July to present the proposed ordinance from BAPAC and answer Council's questions. Also, schedule a staff report to be presented at the first September meeting, including plans for implementation.

**BACKGROUND:**

Over the past decade, City staff and the community has devoted a significant amount of resources in an effort to curb major nuisances related to the operation of problematic alcohol outlets. In several cases only closure of the business could address the issues that the business operators failed to recognize. This immense drain of resources and detriments to the community are a result of policy gaps left due outmoded legislation. The recent number of nuisance hearings over problematic alcohol outlets is indicative of the City's need to update its current alcohol policies and practices.

Fortunately, in the course of resolving some of the alcohol-related nuisance issues, community members have become acutely aware of issues resulting from these aforementioned policy gaps and have assembled suggestions to facilitate the City closing these gaps. Many of these suggestions are based on legislations currently being used in many other cities and have been successful in eliminating some of the nuisance issues that the community is currently experiencing. BAPAC has collaborated with the Alcohol Policy Network to create the proposal, which will be presented to the City Council on the April 25, 2006 agenda.

**FINANCIAL IMPLICATIONS:**

None

**CONTACT PERSON:**

Councilmember Darryl Moore, District Two  
Councilmember Dona Spring, District Four

981-7120  
981-7140

City of Berkeley

Comprehensive  
Alcoholic Beverage  
Sales Commercial  
Activities  
Regulations

Berkeley Alcohol Policy Advocacy Coalition  
Alcohol Policy Network  
April 17, 2006

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1. TITLE

REGULATIONS FOR ALCOHOLIC BEVERAGE SALES COMMERCIAL  
ACTIVITIES: An Outreach, Education, Monitoring and Enforcement Program.

REFERENCES

City of Oakland Deemed-Approved Ordinance.

City of Berkeley Comprehensive Alcoholic Beverage Sales Commercial Activity  
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## 2. PURPOSE

The City Of Berkeley has serious public health and safety problems associated with the proliferation of alcohol outlets. The general purpose of these regulations is to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare by requiring that Alcoholic Beverage Sales Commercial Activities achieve the following objectives:

- To protect adjacent neighborhoods and businesses from the harmful effects attributable to the sale of alcoholic beverages and to minimize the adverse impacts of nonconforming and incompatible uses.
- To provide opportunities for businesses selling alcoholic beverages to operate in a mutually beneficial relationship to each other and with other commercial and civic services.
- To provide mechanisms to address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, disruptive and violent behavior, and escalated noise levels.
- To ensure that businesses selling alcoholic beverages are not the source of undue public nuisances in the community.
- 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.
- To monitor Alcoholic Beverage Sales Commercial Activities to ensure that they do not substantially change their mode or character of operation.
- Establish enforcement laws and procedures that protect the public health, safety and welfare of the community.

## REFERENCES

City of Oakland Deemed-Approved Ordinance  
City of Santa Rosa Deemed-Approved Ordinance

### 3. APPLICABILITY

These Regulations shall apply, to the extent permissible under other laws, to all Legal Nonconforming Alcoholic Beverage Sales Commercial Activities and to all Alcoholic Beverage Sales Commercial Activities authorized Land Use Permits.

Whenever any provision of these regulations or any other provision of law, whether set forth in this code, or in any other law, ordinance, or resolution of any kind, imposes overlapping or contradictory regulations, or contain restrictions covering the same subject matter, the provision that is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in these Regulations.

For the purpose of this Chapter, Alcoholic Beverage Sales Commercial Activities are stores, restaurants, restaurant/bars, bars, brew pubs, cabarets, and specialty businesses with permanent or temporary licenses from the State of California Department of Alcoholic Beverage Control to sell alcoholic beverages to the general public, except where specifically noted in these Regulations.

Activities that have Special Events Permits from the City or one-day licenses from the ABC shall also conform to the Performance Standards. Activities that have Special Events Permits from the City or one-day licenses from the ABC shall be exempt from the Annual Outreach, Education, Monitoring and Enforcement Program Fee.

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#### 4. DEFINITIONS

*The purpose of this Section is to permit consistent and precise interpretation of the Alcoholic Beverage Sales Commercial Activity Regulations.*

- a. ABC – means the State of California Department of Alcoholic Beverage Control.
- b. ABC Control Act – means Division 9 of the State of California Business and Professions Code.
- c. Activity or Activities – means an Alcoholic Beverage Sales Commercial Activity with Deemed-Approved Status or authorized Land Use Permit.
- d. Alcoholic Beverage – means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances and sales that requires a State Department of Alcoholic Beverage Control license.
- e. Alcoholic Beverage Sales Commercial Activity – means the retail sale of alcoholic beverages for on-site or off-site consumption, including liquor stores, convenience food stores, markets, grocery stores, taverns, bars, and restaurants with bars, full service restaurants, specialty wine shops, cabarets.
- f. Cabaret Activity – means an activity where live entertainment occurs in the form of music, singing or dancing, and where liquid refreshments or food are sold.
- g. Conditions of Approval – means a requirement that must be carried out by the activity in order to retain its Use Permit or Deemed-Approved Status.
- h. Convenience Market – means an off-sale establishment where the alcohol footprint is less than 25% of the square footage of the store’s floor space and alcohol, tobacco and junk food sales are less than 50% of the total revenue.
- i. Crime Prevention Through Environmental Design – means the proper design and effective use of the built environment in order to reduce the fear and incidence of crime, and improve the quality of life.
- j. Deemed Approved Activity – means any Legal Nonconforming Alcoholic Beverage Sales Commercial Activity in existence immediately before the effective date of these regulations and considered a Deemed Approved Activity as long as it complies with the Performance Standards set forth in Section \_\_\_\_\_, and shall no longer be considered a Legal Nonconforming Activity.

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- k. Deemed Approved Status – means the permitted use of the land for a legal non-conforming purpose – the Deemed Approved Alcoholic Beverage Sales Activity.
- l. Full Service Restaurant – means a place that is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation, and that has suitable kitchen facilities containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant. To be considered a Full Service Restaurant in this Chapter, the establishment must meet the following criteria:
1. “full service restaurant” shall serve “meals” to guests at all times the establishment is open for business. An establishment shall not be considered a “full-service restaurant” if it serves alcohol without “meal” service being provided with the exception that alcohol sales to restaurant patrons may continue for up to two hours after meal service has ceased to allow guests to comfortably complete their meals.
  2. There shall be a real offer or holding out to sell “meals.” Premises shall make an offer or holding out of sales of “meals” to the public by maintaining and displaying a printed menu and/or a menu board. A two-thirds majority of the items offered on the menu shall be available at any given time the establishment is open. The mere offering of “meals” without actual sales shall not be deemed sufficient.
  3. The “offer” of “meals” is not adequate to meet the above criteria. A “full service restaurant” shall make actual and substantial sales of “meals” to guests for compensation. Substantial sales shall mean that no less than sixty (60) percent of total revenue shall be generated from food service and no more than forty (40) percent of revenue from the sales of alcohol.
  4. “Meals” means the usual assortment of foods commonly ordered at various times of the day for the cuisine served. The service of snack foods and/or appetizers alone shall not be deemed compliance with this requirement. “Meals” shall be prepared on the premises. Heating of food prepared elsewhere shall not constitute a meal for the purposes of this policy.
  5. Premises shall be equipped for meal service and maintained in good faith. Premises must possess and maintain appliances for the cooking of a variety of foods such as stoves, ovens, broilers, or other devices, as well as pots, pans, or containers that can be used for cooking. Premises shall possess the necessary utensils, table service, and condiment dispensers with which to serve “meals” to the public.
  6. A full service restaurant shall comply with all local health department standards.
  7. A full service restaurant may have a separate lounge or bar area provided that the restaurant and bar/lounge area operate as a single entity. The physical layout, entry location(s), spatial connection between the areas, and operational characteristics, among other factors, shall be used to determine compliance. Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
  8. To the extent that ABC regulations do not conflict with the above criteria, a full service restaurant shall comply with all State Department of Alcoholic Beverage Control regulations related to “Bona fide public eating place, meals.”

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- m. Grocery Store – means an off-sale establishment where the alcohol footprint is less than 15% of the square footage of the store’s floor space and alcohol, tobacco and junk food sales are less than 15% of total revenue.
- n. Hearing Officer – means Alcoholic Beverage Sales Administrative Hearing Officer as provided for in Section \_\_\_\_\_.
- o. High-crime – is when a census tract in the City has 20% more crime than the average of all the census tracts in the city in any given year.
- p. Legal Non-Conforming Activity – means an Alcoholic Beverage Sales Commercial Activity that was a nonconforming use for which a valid state of California Alcoholic Beverage Control license had been issued and used in the exercise of the rights and privileges conferred by the license, at a time immediately before the effective date of these regulations. Such an Activity shall be considered a Deemed Approved Activity with respect to alcohol sales, and shall no longer be considered a Legal Nonconforming Activity with respect to alcohol sales as long as it conforms to the Performance Standards set forth in Section \_\_\_\_\_.
- q. License – means a license authorized to be issued to a person by the State of California Department of Alcoholic Beverage Control to sell alcoholic beverages pursuant to Division 9 of the State of California Business and Professions Code.
- r. Liquor Store – means an off-sale establishment where 95% of the merchandise is alcoholic beverages and comprises 80% or more of the total sales.
- s. Local Over Concentration – means there are two or more Alcoholic Beverage Sales Commercial Activities within one thousand (1000) feet of each other.
- t. Off-Sale – means a business where the alcoholic beverage is purchased in sealed containers and taken away from the premises to be consumed elsewhere, e.g. grocery stores and convenience markets.
- u. Ongoing Public Nuisance – means a public nuisance that reoccurs and persists over a period of time.
- v. On-Sale – means a business where the alcoholic beverage is sold and consume on the premises, e.g. restaurants and bars.
- w. Over-concentration – means there are more ABC licenses operating within a census tract than is considered reasonable by the ABC.
- x. Party or Parties. For the purposes of this Chapter, the term party or parties refers to the City of Berkeley, the owner of the Alcoholic Beverage Sales Commercial Activity, and also the property owner if not the same. (Vallejo DAO)
- y. Person to Person Transfers – means an ABC license has been sold by one person or corporation to another person or corporation.

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- z. Performance Standards – means the rules regulating the business practice, activities and land use as set forth in Section \_\_\_\_\_.
- aa. Premises – means (1) the building within which alcoholic beverages are sold and/or consumed, (2) the building and property controlled by the business owner including parking lots, alleys and outbuildings, and (3) the area the for which the owner is responsible for maintaining good order, including the sidewalk abutting the property the business owner controls and the sidewalk twenty (20) feet beyond the property line.
- bb. Premise to Premise Transfers – means a person or corporation with an ABC license is moving the license from one location to another location.
- cc. Private Nuisance – means the unreasonable interference with the quiet enjoyment or use of private property.
- dd. Public Nuisance – means the unreasonable interference with a common right of the general public, i.e., public health, public safety, public peace, public comfort or the public convenience.
- ee. Public Nuisance Balancing Test – is when the negative impact on the public health and safety is weighed against the economic interest of the business owner and the city or the utility of the activity to the common interest.
- ff. Restaurant with Separate Bar – means a Full Service Restaurant that also has an ABC license to operate a bar that sells alcoholic beverages to patrons who are not eating.
- gg. Undue Concentration – is defined by the ABC as either over-concentration or high-crime.

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5. NEW APPLICATIONS

*The purpose of this Section is to provide the City with the means to regulate the activities of new Alcoholic Beverage Sales Commercial Activities and to control the alcohol environment of the City in order to protect the community from the harm caused to the public health and safety from the over-concentration of alcohol outlets.*

a. New Application. No Alcoholic Beverage Sales Commercial Activity may commence unless authorized by a Land Use Permit approved by the Zoning Adjustments Board.

b. Use Permit Expires at End of Current Use. No Use for Alcoholic Beverage Sales Commercial Activity will be authorized beyond the current active use and no prior use shall allow an Alcoholic Beverage Sales Commercial Activity to operate without first receiving authorization by a Land Use Permit approved by the Zoning Adjustments Board.

c. Over-concentration Moratorium. A moratorium on new Alcoholic Beverage Sales Commercial Activities is in effect in all over-concentrated census tracts established by the ABC's most current Licenses Authorized by Census Tract report. Applications shall only be considered for approval in those census tracts where the number of Alcoholic Beverage Sales Commercial Activities is below the number authorized by the ABC's most current Licenses Authorized by Census Tract report.

d. Distance Restrictions.

1. No two Alcoholic Beverage Sales Commercial Activities (except for Full Service Restaurants) shall be located closer than one thousand (1,000) feet from each other.

2. No Alcoholic Beverage Sales Commercial Activities (except for Full Service Restaurants) shall be closer than one thousand feet from sensitive uses including but not limited to schools, day care centers, places of worship, public playgrounds and parks, recreations centers, alcohol and drug treatment services, senior housing and services, other social services, and check cashing facilities.

3. No Alcoholic Beverage Sales Commercial Activity including the parking lot maintained for the benefit of the patrons shall be within one hundred (100) feet of a residence except where Conditions of Approval stipulate limited hours of operation or by design or business operation disruption of residents' sleep is avoided between the hours of ten p.m. and seven a.m.

REFERENCES

BMC 23E.16.040 Alcoholic beverages.

OMC 17.102.210 General regulations applicable to all or several zones.

BPC 23817.5 Number of premises allowed.

BPC 23958.4. Undue concentration.

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BPC 23789. 600 feet from churches, schools, etc.  
Title 4 §61.4. 100 feet from residences.

## 6. DEEMED-APPROVED

*The purpose of this Section is to bring Legal Nonconforming Alcoholic Beverage Sales Commercial Activities into conformance with Performance Standards and to provide the City with the ability to address public nuisance and illegal activity associated with the sale of alcoholic beverages and the proliferation of alcohol outlets.*

a. Automatic Deemed-Approved Status. All Alcoholic Beverage Sales Activities, that were Legal Nonconforming Activities, with respect to Section \_\_\_\_\_ of the Zoning Code, immediately before the effective date of these regulations shall automatically become Deemed-Approved Activities as of the effective date of the Alcoholic Beverage Sales Commercial Activities Regulations and shall no longer be considered Legal Nonconforming Activities. Each Deemed-Approved Activity shall retain its Deemed-Approved Status as long as it complies with the Performance Standards in section \_\_\_\_\_. However, any change in ABC license type including, but not limited to, a change from a Type 20 to a Type 21 license, or a substantial physical change or character of premises as defined in Title 4 of the California Code of Regulations section 64.2(b), shall terminate the Deemed Approved status of the business activity and shall require a Land Use Permit to continue operation. For purposes of this section, the approval of a Land Use Permit shall not be automatic upon termination of the activity's Deemed-Approved Status.

b. Notification of Deemed-Approved Status. The City or its designated enforcement authority shall notify the owner of each Deemed-Approved Activity, and also the property owner if not the same, of the activity's Deemed-Approved Status. The notice shall be sent by regular mail and shall include a copy of the Performance Standards in Section \_\_\_\_\_ of this Chapter with the requirement that they be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review. This notice shall also provide that the activity is required to comply with all Performance Standards; and that the activity is required to comply with all other aspects of these Regulations.

c. Deemed Approved Use – Discontinuance. Whenever an Alcoholic Beverage Sales Commercial Activity discontinues active operation for more than 90 consecutive days, or ceases to be licensed by the State Department of Alcoholic Beverage Control (ABC), the Deemed Approved Status shall be rescinded. Any subsequent Alcoholic Beverage Sales Commercial Activity may be resumed only upon the granting of a Land Use Permit pursuant to Land Use Permit procedures in Section \_\_\_\_\_ of the Zoning Code. However, this requirement shall not apply to a closure for restoration of premises rendered totally or partially inaccessible by an extraordinary natural event that cannot be reasonably foreseen or prevented (such as a flood or earthquake) or a toxic accident, provided that the restoration does not increase the square footage of the business used for the sale of alcoholic beverages. Nor shall this requirement apply to a closure for purposes of repair, if that repair does not change the nature of the premises and does not increase the square footage of the business used for the sale of alcoholic beverages.

If another use has been substituted before the 90 consecutive days have lapsed, then the original Deemed Approved Activity shall not be resumed.

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Once it is determined by the City that there has been a discontinuance of active operation for 90 consecutive days or a cessation of ABC licensing, the property owner will be notified that the Deemed-Approved use has been rescinded. The decision of the Director of the \_\_\_\_\_ Department may be appealed to the Zoning Adjustments Board within ten days of the rescission notice.

d. Legal Nonconforming Use – Discontinuance. Any INACTIVE legal nonconforming uses shall be automatically rescinded due to their non-conformance with Performance Standards as of the effective date of the Alcoholic Beverage Sales Commercial Activity Regulations.

### REFERENCES

Santa Rosa Deemed-Approved Ordinance

City of Oakland Administrative Policy on Discontinuance of Nonconforming Activity BPC23790. Zoning Ordinances.

California Code of Regulations, Title 4 §64.2(b). Substantial Physical Changes of Premises or Character of Premises.

OMC17.114.040(A). Right to Continue.

OMC17.114.050 Nonconforming Activity – Discontinuance.

BMC23C.04.030. Abandonment of Lawful Non-Conforming Uses, Buildings and Structures.

**7. PUBLIC CONVENIENCE OR NECESSITY  
(Amendments to this Section in Bold Type.)**

*The purpose of this Section is to provide the City with an opportunity to forestall or reduce the increase in alcohol related crime in areas of over-concentration and/or high-crime.*

**Berkeley Zoning Ordinance  
Chapter 23E.16 SPECIAL USE STANDARDS  
Section 23E.16.040 Alcoholic Beverages  
Subsection 23E.16.040.2 Public Convenience or Necessity**

A. No alcoholic beverage sales or alcoholic beverage service may be commenced or increased in any way, unless authorized by an Use Permit.

B. The following regulations apply to applications to commence or increase any alcoholic beverage sales or service in any District other than food service establishments with incidental beer and/or wine service.

1. As part of the application, the applicant must provide a list of all establishments within a one thousand (1,000) foot radius which are in the same category of alcoholic beverage sales or service, as defined by the State Department of Alcoholic Beverage Control (ABC);

2. If there is any other establishment, other than a food service establishment with incidental service of beer and/or wine within a one thousand (1,000) foot radius of the site of the proposed use that is in the same category of alcoholic beverage sales or service, the Board shall not approve the application unless it makes all of the following findings of "Public Convenience or Necessity":

a. The proposed establishment will promote the City's economic health, contribute to General Plan or Area Plan policies or further District purposes;

b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales;

c. The applicant has not operated a licensed establishment which has been the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations;

d. If the proposed establishment is located within one thousand (1,000) feet of any public park or Berkeley Unified School District (BUSD) school, the Board shall take into consideration the effect of the proposed establishment upon such sensitive public uses; and

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e. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area. **and will not result in a significant increase in calls for service to the department.**

**f. The application is not opposed by a bona fide neighborhood association or a significant number of neighborhood residents and business owners.**

**g. That alcohol sales are typically a part of this type of business in the City of Berkeley. For example, alcoholic beverage sales in a laundromat, flower shop, bookstore or a check-cashing establishment is not typical of these businesses.**

**3. In addition to the above criteria, the applicant shall meet all of the following criteria to make a finding of “Public Convenience or Necessity”:**

**a. That a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall community or the neighborhood in which the project is located, how the proposed project would enhance physical accessibility to needed goods or services and how the project will intend to protect the community’s health and safety from the public nuisance and illegal activities that may be associated with the sale of alcoholic beverages.**

**b. The proposed project is not within 1,000 feet of another alcohol outlet (except Full Service Restaurants), schools, day care centers, places of worship, public playgrounds and parks, recreations centers, alcohol and drug treatment services, senior housing and services, other social services, and check cashing facilities.**

**c. The census tract where the project is to be located does not have both an over-concentration and a high-crime rate. Over-concentration is according to the ABC’s Authorized Licenses by Census Tract for the year. High-crime is police department calls for service within the census tract exceeding by 20% the average calls for service by census tract citywide during the preceding twelve (12) months.**

C. Increases in alcoholic beverage uses or sales include, but are not limited to, adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine, extending the hours of operation of any establishment that sells or serves any alcoholic beverage and adding to the capacity, floor area or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages. (Ord. 6478-NS § 4 (part), 1999)

REFERENCES

BPC 23E.16.040.2. Public Convenience or Necessity.

OMC 17.102210(B)(3). Public Convenience or Necessity.

BPC 23958.4. Undue Concentration and Public Convenience or Necessity.

BPC 23817.7 Moratorium Exemption, w/in 100-feet of an adjoining census tract.

## 8. PERSON TO PERSON TRANSFERS

*The purpose of this Section is to place operating conditions on a business's alcohol license: a) if the business poses a public health and safety problem as a result of poor business practices, b) if the business is in an area of over-concentration and/or high crime, or c) in order to prevent, control or regulate the transferring of a license from one family member to another, or to associates, in an attempt to escape penalties.*

Under California Business and Professional Code Section 23800(e), the City Of Berkeley can request that conditions be placed on person-to-person transfers. The ABC may adopt these conditions if the request is supported by substantial evidence that the problems either on the premises or in the immediate vicinity identified by the local governing body will be mitigated by these conditions. This process is currently being handled administratively by the City Manager's Office.

- a. Codify the current City Manager's administrative process for requesting conditions to ABC.

**NO DRAFT LANGUAGE (See Neighborhood Services Liaison Taj Johns.)**

### REFERENCE

BPC23800. Conditions

Berkeley City Manager's Administrative Process to Request Operating Conditions

## 9. CHANGE OF MODE OR CHARACTER OF OPERATIONS

*The purpose of this Section is to insure that any change of mode or character of operations will not have a detrimental affect on the public heath and safety or cause undue burden on City services.*

a. Change of Mode or Character. Any Change of Mode or Character shall terminate the Land Use or Deemed-Approved Status. In order to continue the business operation the business owner must apply for a Land Use Permit and receive approval of the Land Use by the Zoning Adjustments Board at a public hearing.

A Change of Mode or Character includes but is not limited to:

1. A change in ABC license type or an addition or removal of an ABC license.
2. A change or alteration of the interior or physical arrangement which materially or substantially alters the premises or the usage of the premises from the original plans or description of the business activity filed with the application.
3. A substantial increase or decrease in the total area of the premises where alcoholic beverages are sold.
4. A increase in the number of hours the business is open from that stated in the original application or resulting from the removal of Operating Restrictions from the ABC license.
5. Change of public ingress or egress from or between adjacent or abutting buildings, room or premises to areas where alcoholic beverages are being sold.
6. Where an area is created within the premises where alcoholic beverages are being sold in which a separate activity unrelated to the sale of alcoholic beverages is conducted that is not under the direct control, supervision and direction of the business owner.
7. A change in the business operation that will result another activity operating from the same premises that is not part of the business as described in the original application.

b. Break in Continuous Operation. An Alcoholic Beverage Sales Commercial Activity has an obligation to serve the public convenience by maintaining regular business hours. Being open sporadically or for short periods of time or being closed for long periods of time for no apparent reason constitute grounds for revocation of Land Use or Deemed-Approved Status.

For purposes of this Chapter, a break in continuous operation does not include:

1. A closure for not more than thirty (30) days for purposes of repair, if that repair does not change the nature of the business or its mode or character.
2. The closure for restoration of the premises rendered totally or partially inaccessible by and act of God or a toxic accident if the restoration does not change the nature of the business or its mode or character.

## REFERENCES

Title 4 §64.2(b). Substantial Physical Changes of Premises or Character of Premises.  
BPC23790. Zoning Ordinances

## 10. SOCIAL HOST

(Drafted by Elizabeth Van Dyke, Student Coordinator, Students for a Safer Southside: the Cal-SIG Binge Drinking Prevention Project, DRAFT 04.14.06)

*The purpose of this Section is deter underage drinking and the furnishing of alcoholic beverages to minors by adults.*

### **CITY OF BERKELEY MINOR ALCOHOL OFFENSE at LOUD or UNRULY GATHERINGS / SOCIAL HOST ORDINANCE.**

WHEREAS, the City of Berkeley, 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 Berkeley, acting through the City Council finds that parties, gatherings, or events 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 Berkeley 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

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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 the quality of life of its residents, and

WHEREAS, of Alameda County respondents to a 2006 BHCS AOD Youth Survey, Berkeley High School youth uniformly had significantly higher rates of alcohol use in the past 30 days (58%) when compared to their county-wide high school cohorts (33% and 35%), and 30% of the Berkeley High School respondents claimed that obtaining alcohol was ‘easy.’

WHEREAS, according to a 2004 Safer California Universities Study, 58.8% of UC Berkeley students consumed alcohol in the past 30 days, 49.8% of underage UC Berkeley students consumed alcohol in the past 30 days, 44.2% of UC Berkeley students who drank alcohol reported binge drinking in the previous two weeks, and 55.1% of UC Berkeley students surveyed thought it would be “very easy” to find an off-campus party if they wanted to drink alcohol.

### **Section 1. Title.**

The title of this chapter shall be “Minor Alcohol Offense at Loud or Unruly Gatherings/Social Host Ordinance.”

### **Section 2. Purposes.**

The purposes of this Ordinance are:

- (A) To protect the public health, safety and general welfare;
- (B) To enforce laws prohibiting the service to and consumption of alcoholic beverages by underage persons, and
- (C) To reduce costs of providing police response services to loud or unruly gatherings, by imposing a civil fee against social hosts and landowners for the recovery of costs associated with providing law enforcement response services to loud or unruly gatherings, including those where alcoholic beverages are served to or consumed by underage persons.

### **Section 3. Definitions.**

For the purpose of this chapter, the following definitions shall apply:

- (A) “*Juvenile*” means any minor child under the age of 18 years old.
- (B) “*Minor*” means any person, under the age of 21 years old.
- (C) “*Party, gathering or event*” means a group of three or more persons who have assembled or are assembling for a social occasion or a social activity.
- (D) “*Person responsible for the event*” also known as the “*social host*” means and includes, but is not limited to:
  - (1) The person who owns, rents, leases or otherwise has control of the premises where the party, gathering or event takes place;
  - (2) The person in charge of the premises;

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- (3) The person who organized the event.

If the person responsible for the event is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the costs incurred for police services pursuant to this chapter.

- (E) “*Police services*” means and includes the salaries and benefits of the Police Officers for the amount of time actually spent in responding to, or in remaining at, the party, gathering or event and the administrative costs attributable to the incident; the actual costs of any medical treatment to injured Officers; the cost of repairing any damaged City equipment or property; and the costs arising from the use of any City equipment in responding to or remaining at a party, gathering or event.
- (F) *Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- (G) *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
- (H) *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.
- (I) *Parent* means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.
- (J) *Premises* means any residence or other private property, place, or premises, including any commercial or business premises.
- (K) *Response costs* are the costs associated with responses by law enforcement, response services to a nuisance gathering where underage drinking has taken place, including but not limited to:
- (1) Salaries and benefits of law enforcement 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 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;
- (4) Any other allowable costs related to the enforcement of Section 13.48.050.
- (L) *Loud or unruly gathering* means a party, gathering or event in which two or more persons at or on a residence or other private property upon which loud or unruly conduct occurs. Such loud or unruly conduct includes but is not limited to:
- (1) Excessive noise;
- (2) Excessive traffic;
- (3) Obstruction of public streets or crowds that have spilled into public streets;

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- (4) Public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;
- (5) Service to or consumption of alcohol or alcoholic beverages by any underage person, except as permitted by state law;
- (6) Assaults, batteries, fights, domestic violence or other disturbances of the peace;
- (7) Vandalism,
- (8) Litter; and
- (9) Any other conduct which constitutes a threat to public health, safety and quiet enjoyment of residential property or general welfare.
- (M) The criteria for “*Reasonably should have known*” and/or “*reasonably should have expected*” with regard to underage drinking should follow general legal principals. The expectation that underage drinking is not occurring is *not reasonable* if such a behavior is being exposed to public view. Nor does the simple desire that underage drinking not occur on premises entitle one to reasonably expect that it will not occur. Persons responsible for a gathering should take steps to control the gathering pursuant to Section (5)(A)(1).

**Section 4. Responsibility for Proper Property Management.**

Every owner of a residence or other private property within the City of Berkeley is required to maintain, manage and supervise the property and all persons thereon in a manner so as not to violate the provisions of this Ordinance. The owner of the property remains liable for multiple, ongoing violations pursuant to this Ordinance, regardless of any contract or agreement with any third party regarding the property. Multiple and ongoing violations of this Ordinance shall be recognized as a public nuisance pursuant to Section 13.48.030 and hold the property owner liable under Section 13.48.040 (A).

**Section 5. Unlawful hosting and/or permission of gatherings on private property when alcohol is served to minors.**

- (A) No person shall suffer, permit, allow or host a loud or unruly party or gathering at his or her place of residence or other private property, place or premises under his or her control where any persons under the age of 21 are present and alcoholic beverages are in the possession of, or are being consumed by, any person under the age of 21 years.
  - (1) It is the duty of any person having control of any premises, who knowingly hosts, permits, allows or tolerates a loud or unruly party or 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, allow, tolerate a loud party or unruly gathering to take place at said

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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.

**Section 6. Unsupervised possession of alcohol unlawful.**

Except as permitted by state law, no person under the age of 21 years shall have in his or her possession, or consume, any alcoholic beverage at any place *not* open to the public, unless that person is being supervised by his or her parent or legal guardian.

**Section 7. Penalties for Violation of Ordinance.**

- (A) It shall be an infraction for any responsible person who knowingly conducts, condones, aids, allows, or permits a loud or unruly gathering at a residence or other private property where the consumption of alcohol is present by underage minors/juveniles should have reasonably been expected by the responsible person.
- (B) Fines.
  - 1) A first violation of this Section shall be punishable by a \$250 fine.
  - 2) A second violation of this Section at the same residence or other private property, or by the same responsible person, within a twelve month period shall be punishable by a fine of \$500.
  - 3) A third or subsequent violation of this Section at the same residence or other private property, or by the same responsible person, within a twelve month period shall be punishable by a fine of \$1,000.
- (C) The second, third or subsequent violation fines prescribed at subsections (B)(2) and (B)(3) are payable whether or not the responsible person for such an unlawful gathering is different from the responsible person for any prior unlawful gatherings at the residence or other private property.
- (D) The fines prescribed in subsection (B) are in addition to any response costs associated pursuant to this ordinance.

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- (E) The fine schedule prescribed at subsection (B) is a “rolling schedule” meaning that in calculating the fine payable the Police Department or City Attorney shall count backward starting from the date of the most recent loud or unruly gathering to determine how many prior loud or unruly gatherings have taken place at the residence or other private property in question during the statutory twelve month period.
- (E) The fines set forth in this Section may be appealed pursuant to Section (11) of this ordinance. The payment of any such fines shall be stayed upon any timely appeal.

**Section 8. Recovery of Response Costs**

When law enforcement responds to a loud or unruly gathering at a residence or other private property within the City of Berkeley within a twelve month period of the first violation given to a responsible person for a loud or unruly gathering where underage drinking is present pursuant to Section (5), all responsible persons shall be jointly and severally liable for the city’s costs of providing police services for that response and all subsequent responses during the statutory twelve month period.

When law enforcement makes an initial response to a loud or unruly gathering at a residence or other private property within the City of Berkeley pursuant to Section (5), the officer shall inform any responsible persons for the gathering at the scene that:

- (A) The official has determined that a loud or unruly gathering exists; and
- (B) Responsible person(s) will be charged for any response costs required for subsequent response to the scene for a loud or unruly gathering within a twelve month period.

After the first violation pursuant to Section (5) of this Ordinance, the City of Berkeley shall assess response services costs pursuant to Section (7). If a responsible person cannot be identified at the scene, the official may issue a violation to one or more persons identified in Section (3)(D) and/or subsequently return to the residence or other private property and issue the violation to a then-present responsible person. Violations given to responsible persons who do not reside at the residence or other private property in question shall be delivered by first-class and/or certified mail.

**Section 9. Billing and Collection**

The amount of the response costs shall be deemed a debt owed to the city by the responsible person held liable in Section (8) for the loud or unruly gathering and, if a juvenile, by the juvenile’s parents or guardians. Any person owning such costs shall be liable in the civil action brought in the name of the city for recovery for such fees, including reasonable attorney fees.

Notice of the costs for which the responsible person is liable shall be mailed via first class and/or certified mail within 14 days of the response giving rise to such costs. The notice shall contain the following information:

- (A) The name of the person(s) being held liable for the payment of such costs;

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- (B) The address of the residence or other private property where the gathering occurred;
- (C) The date and time of the response;
- (D) The law enforcement, fire or emergency service provider who responded;
- (E) The date and time of any previous violation given pursuant to Section (5) and/or previous responses to loud or unruly gatherings at the residence or other private property in question within the previous twelve months; and
- (F) An itemized list of the response costs for which the person is being held liable;

The responsible person must remit payment of the notices response costs to the \_\_\_\_\_ within thirty days of the date of the notice. The payments of any costs shall be stayed upon a timely appeal made pursuant to Section (11).

**Section 10. Reservation of Legal Options.**

Nothing in this Ordinance shall be construed as a waiver by the City of Berkeley of any right to seek reimbursement for actual costs of response services through other legal remedies or procedures. The procedure provided for in this Ordinance is in addition to any other statute, ordinance or law, civil or criminal. This Ordinance in no way limits the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this Ordinance.

**Section 11. Appeals.**

Any person upon whom is imposed a fine/penalty pursuant to Section (7) and/or response costs recovery fees pursuant to Sections (8) and (9) shall have the right to appeal the imposition of such fine/penalty or fees to the \_\_\_\_\_ pursuant to the procedures established by the local jurisdiction for appealing the abatement of public nuisances.

**Section 12. Severability.**

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

**Section 13. Effective Date.**

This Ordinance shall take effect on \_\_\_\_\_.

REFERENCES

City of Santa Rosa Social Host Ordinance  
City of San Diego Social Host Ordinance  
Ventura Model Social Host Liability Ordinance

**11. MANDATORY RESPONSIBLE BEVERAGE SERVICE (RBS) TRAINING**  
(Drafted by Elizabeth Van Dyke, Student Coordinator, Students for a Safer Southside: the Cal-  
SIG Binge Drinking Prevention Project, DRAFT 04.14.06)

*The purpose of this Section is to make business owners, managers, clerks and servers aware of their responsibilities when selling alcoholic beverages to the general public. This ordinance will deter the sale of alcoholic beverages to (a) minors, (b) adults purchasing alcoholic beverages for a minor, and (c) intoxicated person, thereby protecting public health and safety.*

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WHEREAS, the sales of alcohol to minors and service to intoxicated persons are a public health and safety concern in the City of Berkeley and the rest of Alameda County; and

WHEREAS, the problems associated with underage and binge drinking are a drain on vital resources from the rest of the community at a time when budget constraints are at an all time high; and

WHEREAS, alcohol-related problems often include injuries and deaths caused by vehicle crashes, sexual assaults, domestic violence and other crimes that are a threat to public health and safety; and

WHEREAS, Responsible Beverage Service training has a strong track record in reducing alcohol-related problems, particularly in the state of Oregon where there was an 11% reduction in fatal, alcohol-related car crashes in one year and a 23% drop in single-vehicle nighttime injury crashes over three years after training became mandatory statewide; and

WHEREAS, between July 1<sup>st</sup> and September 31<sup>st</sup> of 2005, 44 people were arrested for a DUI in the City of Berkeley, and according to the UC Berkeley Police Department the majority of alcohol-related DUI offenses since 2000 is steadily rising; and

WHEREAS, according to a Berkeley Police Department 2005 Alcohol ASIPS study, the area on Telegraph between Bancroft and Derby where there is a concentration of bars, liquor stores, taverns and convenience stores, account for a disproportionate number of calls for police service and alcohol-related arrests; and

WHEREAS, in a 2006 UC Berkeley student-lead Responsible Beverage Service study of five bars near campus, students observed the following behaviors: inconsistent ID checks (particularly at the bar), underage drinking, servers drinking on the job, and service to obviously intoxicated individuals; and

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WHEREAS, according to a 2004 Safer California Universities Study, 28.1% of UC Berkeley students said it was “very easy” or “easy” to find a bar within two miles of campus where they could buy alcohol without showing an ID, 29.5% for a liquor/grocery or convenience store, and 31.40% for a restaurant; and

WHEREAS, according to a recent Alameda County BHCS AOD Youth Survey 23% of Berkeley High students (and 40% of Berkeley Alternative students) gain access to alcohol through local supermarkets and liquor stores; and

WHEREAS, there are currently 2869 liquor licenses in Alameda County, and of those licenses 332 (11.6%) are for retail sales in the City of Berkeley; and

WHEREAS, In 2002 in Alameda County there were 192.6 liquor outlets per 100,000 residents, compared to the California rate of 188.7 per 100,000 residents; and

WHEREAS, in a recent study by the Responsible Hospital Coalition, a San Diego-based group, found 83% of workers trained in Responsible Beverage Service practices were “likely” or “very likely” to change the way they do their jobs and 99% said they would recommend the training to others.

### Section 1. Purpose and Intent.

It is the intention of this ordinance to:

- A. Prevent the over-service and over-consumption of alcohol by customers while on the premises of licensed vendors;
- B. Reduce alcohol-related crashes, injuries, and deaths that often result from driving while intoxicated;
- C. Eliminate the sale to and/or consumption of alcohol by underage persons;
- D. Assist licensed vendors to develop and implement responsible policies for the promotion, sales and service of alcohol; and
- E. Promote an attitude of professionalism on the part of vendors who sell or serve alcohol.

### Section 2. Definitions.

As used in this section, the following definitions apply:

- A. *Alcoholic beverage* means any beverage fit for consumption, 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, including but not limited to: alcohol, spirits, wine, beer, and every liquid or solid containing alcohol.
- B. *Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- C. *ABC* means the California Department of Alcoholic Beverage Control.
- D. *Vendor* means a business owner that is licensed to sell or serve alcoholic beverages to the general public, including, but not limited to California Department of Alcoholic Beverage

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- Control license types 20, 21, 30, 40, 41, 42, 47, 48, 50, 61, and is responsible for the certification of his or her employees as it pertains to this ordinance.
- E. *Server* means any person who, as part of his or her employment, sells, serves or delivers alcohol that has been purchase from either an on-premise or off-premise retail licensed facility.
- F. *Manager* means a person, regardless of the job title or description, who has discretionary powers to organize, direct, carry on, or control the operations of a licensed alcohol outlet. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the licensed premises:
1. To hire or separate employees.
  2. To contract for the purchase of furniture, equipment, or supplies other than the occasional replenishment of stock.
  3. To distribute funds of the licensed business other than for the receipt of regularly replaced items of stock.
  4. To make or participate in policy decisions regarding operation o the licensed business.
- G. *Training* means an educational course in responsible beverage sales and service methods, conducted by an organization certified by the California Coordinating Council on Responsible Beverage Service (“CCRBS”) or the California Department of Alcohol Beverage Control (ABC).
- H. *Alcohol Handlers Card* is a card that states that the person has attended the city-mandated RBS training and has signed a statement of consent that he/she will observe the recommendations of the RBS training.

Section 3. Certified Training.

- A. Such training shall be conducted by an organization certified by the California Council on Responsible Beverage Service or the California Department of Alcohol Beverage Control. It shall be at least four hours in length, and include the following elements for review and discussion:
1. Laws covering the service of alcoholic beverages and the operation of establishments serving alcoholic beverages.
  2. Alcohol as a drug and its effects on the body and behavior, including its effects on a person operating a motor vehicle.
  3. Effects of alcoholic combination with commonly used drugs, both legal and illegal.
  4. Methods of recognizing the signs of intoxication, development of standard procedures designed to prevent customers from becoming intoxicated, and the learning of skills to intervene with intoxicated customers.
  5. Development of standard operating procedures for dealing with underage customers, including the use of age verification techniques.
  6. Development of standard operating procedures to assist employees who need help in dealing with underage customers, intoxicated customers and/or other “problem customers,” and in maintaining records that relate to such incidents.
  7. Methods of dealing with special event promoters and development of written policies and procedures for the marketing of alcohol.

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8. Methods of recognizing and dealing with customers who use or traffic in illegal drugs.
  9. Development of policies and procedures for dealing with employees who use or traffic in illegal drugs.
  10. A comprehensive test to ensure that the trainee has a working knowledge of the concepts presented in the program as well as the skills needed to implement them.
- B. Until such time as a new employee has successfully completed the training outlined in Section (3)(A) above, the vendor must provide for the supervision of that employee in the handling of alcoholic beverages. Supervision of the uncertified employee must be done by someone who has successfully completed the specified training outlined in Section (3)(A) above.
- C. No vendor shall continue to employ after six months of the effective date of this ordinance any person who acts in the capacity of selling, serving, or delivering alcoholic beverages unless such person completes or has completed an educational program that certifies them as having been trained to carry out the duties specified in their job description.
- D. No vendor shall employ any person to work as a manager or server or in any other capacity where such person may sell, serve or deliver alcoholic beverages in or from premises licensed to sell alcohol, unless such person, within thirty (30) days of their date of hire, completes or has completed an education program that certifies them as having been trained to carry out the duties specified in their job description.

Section 4. Alcohol Handlers Card.

- A. After six months from the effective date of this ordinance, no vendor shall employ any person to work as a manager or server or in any other capacity where such person may sell, serve or deliver alcoholic beverages in or from premises licensed to sell alcohol, unless such person, within thirty (30) days of their date of hire, has obtained an Alcohol Handlers Card, issued by the \_\_\_\_\_.
- B. No vendor shall allow any person who was is in their employment at the effective date of this ordinance to continue working in any capacity wherein they sell, serve or deliver alcoholic beverages, unless such person within six months from that date has obtained the Alcohol Handlers Card specified in Section (4)(A).

Section 5. Vendor Responsibilities, Policies and Procedures

- A. All vendors must develop and maintain on their premises a comprehensive set of written policies and procedures that reflect the standards and practices set forth in this ordinance. Such policies and procedures that reflect the standards and practices set forth in this ordinance. Such policies and procedures must include but are not limited to the following:
1. California laws and liability regarding sales to minors and sales to obviously intoxicated individuals.
  2. Checking identification, identifying minors, and identifying signs of obvious intoxication.

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3. Methods of effectively managing customer drinking (i.e. refusing or delaying service).
  4. Alcoholic drink equivalencies and the effects of alcohol on the body.
  5. House policies specific to the establishment regarding alcohol beverage service and customer relations.
- B. It shall be the responsibility of the vendor to verify that all new employees who serve, sell or deliver alcoholic beverages have successfully completed the training described in Section (3)(A) above herein within the first 30 days of such employment.
  - C. Every uncertified individual after thirty (30) days of their date of hire who continues to be employed to sell, serve or deliver alcoholic beverages in or from a premises licensed to sell alcohol by the vendor constitutes a violation of this Ordinance, in which the vendor is subject to penalties under Section (7).
  - D. It shall be the responsibility of the vendor to verify that all persons who have been employed by them before the effective date of this ordinance and who continue to be employed, working in any capacity wherein they sell, serve or deliver alcoholic beverages, have successfully completed the training described in Section (3)(A) herein within six months of the effective date of this ordinance.
  - E. Vendors shall require all new employees prior to their starting work, to review and acknowledge in writing that they have read, understand, and will comply with vendor's policies required in Subsection (A) above, as a condition of their continued employment. In addition, all employees shall review said policies on an annual basis, at such time signing and acknowledgement that they have read, understand and will comply with them as a condition of their continued employment.
  - F. Records of Compliance to all sections of this ordinance must be kept on the premises of the licensee. This includes the written acknowledgement of the policies described in Subsection (A) above herein, as well as a list of all persons who have completed training along with certification/recertification documents pursuant to Section (4) above. Such documents must be available for review upon request from a law enforcement officer or other inspector.
  - G. Vendors must prominently post signs inside the establishment, clearly visible to all customers stating: "It is illegal to sell, furnish, or give away an alcoholic beverage to any obviously intoxicated person, punishable by \$1000 fine and 24 hours of community service (California Business and Professions Code, Section 25602)." The sign shall be at least 8 1/2 by 11 inches and have the lettering at least 1 inch in height.
  - H. Vendors shall provide written proof of employees who have received RBSS training (i.e. list of employees, date of RBSS training, expiration date, etc.) at the annual renewal of business license process. In order to maintain a business license, a vendor shall comply with all provisions of this ordinance.

Section 5. Employee Responsibilities.

- A. It shall be the responsibility of the employee to bear the financial cost of being certified in all the duties related to his or her job description. This includes being re-certified every two years.
- B. It shall be the responsibility of the employee to bear the financial cost of acquiring and yearly renewal of an Alcohol Handlers Card with the City of Berkeley.

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Section 6. Non-Certified Training Programs.

- A. Training programs that are not certified by CCRBS and/or the ABC will have six months from the effective date of this ordinance to obtain that certification. Vendors may still use such programs during that period to train new employees as long as the vendor can show that the program contains all of the elements outlined in Section (3)(A) herein.
- B. Existing employees who have received training by a non-certified training program under the circumstances described in Subsection (A) above will not be considered to be in full compliance with the provisions of this ordinance and must complete certification as outlined in Section (3)(A) within six months of the effective date of this ordinance.

Section 7. Penalties.

- A. A violation of any provision of this ordinance of a failure to comply with any mandatory requirements of this ordinance is subject to prosecution in accordance with Title 1 of this Code and may also be enforced through injunctive or other relief available by law. Penalties or violation of the provisions of this ordinance may result in a misdemeanor citation, punishable by a maximum of one year in jail and a \$1000 fine.
- B. Administering departments will be authorized to charge cost recovery fees for services provided under this chapter. Cost recovery fees may also be recovered for equipment and personnel expenses incurred. All penalties, application fees and related costs recovery fees shall be credited to “Responsible Beverage Service and Sales Regulation Fund.” The fund shall be used exclusively, and may be expended without further council action, for those expenses associated with the administration and enforcement of this ordinance.

Section 8. Appeals.

- A. A person aggrieved by an action of the City taken pursuant to this ordinance may appeal the decision by filing with the City Clerk a statement addressed to the City Manager and setting forth the facts and circumstances regarding the appealed action. The City Clerk shall notify the applicant, in writing, of the time and place set for the hearing on the appeal.
- B. The hearing on the appeal must be held within 20 business days of the City Clerk’s receipt of the appeal.
- C. The City Manager or his designee shall serve as Hearing Officer unless the appellant objects thereto at the time of the filing of the appeal, in which case an independent Hearing Officer shall be appointed in accordance with this code. The Hearing Officer shall issue a decision regarding the appeal within 10 business days of the conclusion of the hearing. The Hearing Officer’s decision is final.

Section 9. Effective Date.

This ordinance shall take effect on \_\_\_\_\_.

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REFERENCES:

City of National City Responsible Beverage Sales and Service Ordinance

## 12. SPECIAL EVENTS PERMITS

*The purpose of this Section is to permit local law enforcement to monitor special events where alcoholic beverages are served so that they do not endanger the public health and safety. This will permit the management of potential law enforcement problems that may result from the consumption of alcoholic beverages and the crowds attending the event.*

- a. Special Events Where Alcoholic Beverages Are Sold.
- b. Security.
- c. Liability for Violations.

**NO DRAFT LANGUAGE (See BPD Special Events Permit Process.)**

### REFERENCES

Oakland Police Department Special Events Permit Review Process  
Berkeley Police Department Special Events Permit Review Process  
OMC 9.52. Special Events Permits.

### 13. OUTREACH, EDUCATION, MONITORING AND ENFORCEMENT

*The purpose of the Outreach, Education, Monitoring and Enforcement Program is to provide the City with a process and the necessary staff to work with the community and alcohol retailers to address public nuisance and land use problems associated with the sale of alcoholic beverages. This program will protect the public health and safety of the community as well as the safety of the business owners, their employees and their patrons.*

a. Alcohol Enforcement Unit. The Unit will be responsible for outreach and education to the community and alcohol retailers, the monitoring of businesses that sell alcoholic beverages, and the enforcement of the Alcoholic Beverage Sales Commercial Activity Regulations.

The Unit will be comprised of a City Attorney, a City Planner, a Neighborhood Services Liaison from the City Manager's Office, a Code Inspection Officer and a Police Officer. Each member's responsibilities will correspond to his or her authority and expertise. A general outline of areas of responsibility may look like the following:

- City Attorney – Legal Expertise, Negotiations and Prosecution – Enforcement
- City Planner – Land Use Expertise, Reporting - Enforcement
- Neighborhood Services Liaison – Community Organizing, Mediation – Outreach and Education
- Code Inspection Officer – Blight, Nuisance, and Building Code Expertise – Monitoring and Enforcement
- Police Officer – Violations, Citations, Evidence Collection – Outreach, Monitoring and Enforcement

The Unit will also work cooperatively with other departments of the City to insure that all Alcoholic Beverage Sales Commercial Activities are in compliance with the Performance Standards. Other departments that may be asked to join in site inspections may include but not limited to the Fire Department, Environmental Health Department, Alameda County Environmental Health, or the State of California Department of Alcoholic Beverage Control.

b. Annual Alcoholic Beverage Sales Commercial Activity Fee. An annual fee shall be assessed to all Alcoholic Beverage Sales Commercial Activities with a Land Use Permit or Deemed-Approved Status in order to defray the expense to the City for the Outreach, Education, Monitoring and Enforcement Program. Non-payment of the fee constitutes a violation of the Performance Standards and may result in the revocation of Land Use or Deemed-Approved Status.

#### REFERENCES

City of Oakland Alcohol Beverage Action Team  
City of Santa Rosa City Attorney for Blight and Nuisance  
City of Oxnard Police Department Alcohol Enforcement Officer  
City of Vallejo Complaint Response Team  
Annual Fees – Oakland, Santa Rosa, Unincorporated Alameda County

## 14. PERFORMANCE STANDARDS

*The purpose of the Performance Standards is to control dangerous or objectionable environmental effects of Alcoholic Beverage Sales Commercial Activities. These standards shall apply to all Alcoholic Beverage Sales Commercial Activities including but not limited to stores, restaurants, bars, cabarets and temporary activities that sell alcoholic beverages to the general public.*

An activity shall retain its Land Use or Deemed Approved Status only if it conforms to all of the following Performance Standards:

- a. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.
- b. That it does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area.
- c. That the business operation and premises comply with Crime Prevention Through Environmental Design Prevention Principles and Americans with Disabilities Act Accessibility Guidelines in order to protect the public health and safety as well as the safety of the business owner, employees and patrons.
- d. That it does not result in repeated nuisance activities within the premises or in close proximity to 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.
- e. That it complies with all provisions of all local, state or federal laws, regulations or orders, including those of the ABC, State of California Business and Professions Code §24200 and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual City business taxes and alcohol sales permit fees.
- f. In addition to the business owner's responsibility for any public nuisance or illegal activity occurring in the premises and on the property leased or owned by the business owner, the business owner is also responsible for public nuisance and illegal activity on the sidewalk adjoining the property and extending twenty (20) feet beyond the property line.
- g. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of, abutting properties and the surrounding neighborhood.

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- h. That all business owners, managers, servers and clerks receive certified Responsible Beverage Service training prior to selling or serving any alcoholic beverages, and that they be recertified every two years.
- i. To insure the safety of the business owner, patrons and law enforcement officers, no more than 15% of the square footage of windows and 10% of clear doors of off-sale premises shall be obstructed by signs or advertising or any other obstruction, including but not limited to security screening or bars, UV barriers, plywood or other opaque material, refrigeration equipment, display racks, shelving, merchandise, and newspaper racks. All signs and advertising shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises from the public sidewalk or entrance to the premises. This includes the area in which the cash registers are maintained.
- j. Where the business is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated so as to avoid disruption of residents' sleep between the hours of ten p.m. and seven a.m.
- k. That the premises and property do not constitute a visual blight to the surround neighborhood.
- l. Any ABC Operating Restrictions or City Conditions of Operation, shall be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review.

REFERENCES

City of Oakland Deemed-Approved Ordinance  
City of Santa Rosa Deemed-Approved Ordinance  
BAPAC Recommendations  
Crime Prevention Through Environmental Design Principles  
BPC 25619. Enforcement by local authorities.  
BPC 24200. Grounds.  
BPC 25612.5. Retail off-sale operating standards.  
BMC 12.92.030. Unlawful nuisance-Inadequately maintained property.  
BMC 20.16.180. Window signs.  
OMC 17.102.210. General regulations applicable to all or several zones.

## 15. ENFORCEMENT, ACCOUNTABILITY AND SUSTAINABILITY

*The purpose of this Section is to provide the necessary staffing and community structures to enforce these Regulations and to institutionalize accountability and sustainability.*

Upon receiving a complaint from the public, Police Department, or any other interested person that an Alcoholic Beverage Sales Commercial Activity is in violation of the Performance Standards as specified in Section \_\_\_\_\_, the following procedure shall be followed:

a. Complaint Response Team. A four member Complaint Response Team, consisting of a Police Department Officer, Code Enforcement Officer, a resident (chosen by the City Manager's Office on an interim or permanent basis) and an owner or operator of an alcohol outlet (chosen by the City Manager's Office on an interim or permanent basis) 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, Code Enforcement Officer will investigate the alleged land use and/or code violations, the Police Officer will investigate any alleged criminal violations, the resident will talk to neighbors to assess their perception of the alleged violation, and the alcohol outlet representative will assess the business's ability to avoid or abate the alleged violation. Resident and alcohol outlet representative shall serve as volunteers without financial compensation.

Based upon its finding the Complaint Response Team will draft a report with its recommendations and will inform the complainant of its intended actions. The Complaint Response team may conclude that (1) there is no necessity to take action, (2) the problem is intermittent and can be handled as an infraction, or (3) the problem is persistent and constitutes a serious public health and safety risk and should proceed to a hearing before the Alcoholic Beverage Sales Administrative Hearing Officer for consideration of violations of Performance Standards.

b. Consideration of Complaint Procedure for Occasional or Intermittent Violations. The Complaint Response Team will make a site visit to assess the nature of the complaint and its validity, and to inspect the premises for violations of the Performance Standards. The Team will inform the business owner/operator of the complaint and any other violations of Performance Standards and suggest ways that the business operation can be improved to ameliorate the problem(s). The owner/operator of the business will be informed that the Team will return in twenty (20) days to reinspect the premises. If the violations have not been corrected after twenty (20) days, the business owner will be cited for a first violation. On subsequent reinspections the business owner may be cited for second and third violations. The business owner shall be liable for fines and reinpection fees as specified in Section \_\_\_\_\_. If the problem persists or the owner or operator of the business fails to cooperate with or respond to the Complaint Response Team, the Team shall forward all materials to the Hearing Officer to determine whether the Land Use or Deemed-Approved Status of the Alcoholic Beverage Sales Commercial Activity should be modified or revoked. The Hearing Officer shall review the Land Use or Deemed-Approved Status at a public hearing as specified in Section \_\_\_\_\_.

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c. Ongoing Public Nuisance. Once the Complaint Response Team has identified a problem as persistent and ongoing it shall send a Nuisance Abatement Notice to the owner of the business and the owner of the property informing them of the nature of the nuisance and demanding abatement within thirty (30) days. This Notice will also inform the business owner and the property owner of their potential liability for fines up to \$1,000.00 a day and administrative cost recovery beginning on the first day of Notice. If the problems are not abated after thirty (30) days a second Notice shall be sent to the business owner and the property owner informing them that the matter has been forwarded to the Hearing Officer to determine whether the Land Use or Deemed-Approved Status of the Alcoholic Beverage Sales Commercial Activity should be modified or revoked, and that they are now liable for fines up to \$30,000.00 and administrative costs.

d. Penalties for Violations.

1. For the first citation in any one-year period the penalty shall be the total sum of \$250.00.

2. For the second citation in any one-year period the penalty shall be the total sum of \$500.00.

3. For the third citation in any one-year period the penalty shall be the total sum of \$1,000.00.

4. For each and every day a public nuisance continues the penalty will be \$1,000.00 a day to a maximum of \$250,000.00 a year.

5. The City shall bill all persons liable for the penalties by mail showing the itemized cost of such chargeable service and requesting payment. Payment of the penalties shall be due within thirty (30) days of the date of the bill is deposited in the mail. If full payment is not received within the required time for payment, the bill will be delinquent, and all persons liable for the penalties shall be charged interest at the maximum legal rate from the date the payment period expires and a further civil penalty in the amount of \$100.00. The delinquent costs may be placed as a lien against the property or collected by the City in any manner authorized by law and are recoverable in a civil action filed by the City in a court of competent jurisdiction.

e. Permanent Record. A permanent record shall be retained by the City: of the complaint, activities of the Complaint Response Team, and any administrative proceedings and outcomes.

f. Alcohol Policy Working Group. An ad hoc committee led by a City Councilmember and comprised of Council staff, City Planners, City Attorneys, Police Officers, residents, alcohol outlet owners, community based organizations and other interested parties that meets monthly to discuss issues related to the alcohol environment in the City, in order to maintain accountability for problems associated with the sale of alcoholic beverages and to sustain the City's preventative strategy to protect the public health and safety.

### REFERENCES

City of Vallejo Complaint Response Team.

City of Oakland Alcohol Beverage Action Team.

BMC13.48.050 Schedule of civil penalties.

West County Alcohol Policy Working Group, Unincorporated Contra Costa County

## 16. HEARING PROCEDURE FOR CONSIDERATION OF VIOLATIONS

*The purpose of this Section is to prescribe the procedure for the imposition of Conditions of Approval, for the revocation of Land Use or Deemed-Approved Status, and for appealing Conditions of Approval or the revocation of Land Use or Deemed-Approved Status in order to protect the public health and safety and the due process rights of the business and property owners.*

a. Administrative Hearing Officer (Hearing Officer). There is created an Alcoholic Beverage Sales Administrative Hearing Officer. The Hearing Officer shall conduct public hearings and make determinations whether violations of Performance Standards, Conditions of Approval, undue negative impacts or public nuisance activity are occurring. This section is not intended to restrict the powers and duties otherwise pertaining to other City officers or bodies, in the field of monitoring and ensuring the harmony of Alcoholic Beverage Sales Commercial Activities in the City. These parties shall have the powers and duties assigned to them by the Municipal Code, by the Zoning Code, by other codes and ordinances, by the City Charter, or by valid administrative authority.

The City Manager shall appoint one or more individuals as the Hearing Officer(s) for an administrative hearing held under this Chapter. The employment, performance evaluation, compensation and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of penalties or costs awarded by the officer. The Hearing Officer shall not be a City employee or City official, whether elected or appointed. (SR DAO, Haas v. County of San Bernardino, 27 Cal.4<sup>th</sup> 1017, 119 Cal.Rptr.2d 341, May 6, 2002)

b. Procedure for Consideration of Violations of Performance Standards. Upon referral from the Complaint Response Team that an Activity is in persistent violation of the Performance Standards in Section \_\_\_\_\_ the operating status of the Alcoholic Beverage Sales Commercial Activity in question shall be reviewed by the Hearing Officer at a public hearing. Notification of the public hearing shall be in accordance with Section \_\_\_\_\_ below.

The purpose of the public hearing is to receive testimony and evidence on whether the operating methods of the Activity are causing undue negative impacts in the surrounding area and/or are resulting in a public nuisance. At this hearing, the hearing officer shall determine whether: 1) the Activity conforms to the Performance Standards set forth in section \_\_\_\_\_ and to any other applicable criteria, and may continue the Activity; or 2) to require changes or impose reasonable Conditions of Approval that in the judgment of the officer are necessary to ensure conformity with the Performance Standards or applicable criteria, and these conditions shall be based on the evidence presented; or 3) to revoke the Land Use Permit or Deemed-Approved Status. The decision of the officer shall be based upon information compiled by staff and evidence from the business owner and all other interested parties.

New Conditions of Approval shall be made a part of Activity's Performance Standards. The determination of the Hearing Officer shall become final ten calendar days after the date of decision unless appealed to the Zoning Adjustments Board in accordance with Section \_\_\_\_\_ below.

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In the event there is a negotiated settlement for Conditions of Approval between the City, the business owner and the property owner, the settlement shall constitute the decision of the Hearing Officer for the purpose of a first hearing in the matter. Any subsequent violations of the Conditions of Approval or Performance Standards may result in a public hearing to revoke the Land Use Permit or the Deemed-Approved Status.

If in the judgment of the Hearing Officer, the owner of a Deemed-Approved Activity is unable to abate the nuisance, and the nuisance activity is shown to be a significant threat to the public health and safety of the surrounding neighborhood, the Hearing Officer may revoke its Deemed-Approved Status. Any continued operation of the business shall require a Conditional Use Permit approved by the Zoning Adjustment's Board.

c. Procedure for Consideration of Violations of Conditions of Approval. In the event of a violation of any of these Regulations, or upon evidence that there has been a failure to comply with any prescribed Conditions of Approval, the Hearing Officer may hold a public hearing. Notification of the public hearing shall be in accordance with Section \_\_\_\_\_ below.

The purpose of this hearing is to receive testimony and evidence and determine whether violations of any Conditions of Approval, or further violations of Performance Standards or these Regulations have occurred. Upon a showing of a violation or failure to comply, the Hearing Officer shall revoke the Land Use Permit or Deemed-Approved Status.

Any continued operation of a Deemed-Approved Activity shall require a Land Use Permit approved by the Zoning Adjustments Board.

The determination of the officer shall become final ten calendar days after the date of decision unless appealed to the Zoning Adjustment's Board.

d. Appeal to Zoning Adjustments Board de Novo. Within ten calendar days after the determination of the Hearing Officer an appeal may be taken to the Zoning Adjustments Board (Board) by the owner of the Activity or any other interested party. In the event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. The appeal shall be made on a form prescribed by the City. The appeal shall state specifically why it is claimed there was an error or abuse of discretion by the Hearing Officer or why the decision is not supported by the evidence in the record. The appeal shall be accompanied by sufficient information as may be required to facilitate review. Upon receipt of the appeal and the required appeal fee in accordance with Section \_\_\_\_\_ below, the Secretary to the Board shall set the date for its consideration, and shall, not less than twenty-one (21) days before the hearing, give written notice to: the owner of the Activity; the property owner; the appellant; the adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as appropriate, of the time, date and place of the hearing on the appeal.

In considering the appeal, the Zoning Adjustments Board shall determine, de novo, whether the established use conforms to the applicable Performance Standards and/or Conditions of Approval, and may continue or revoke the Land Use Permit or Deemed Approved Status; or require such changes in the existing use or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity with the Performance Standards.

The Zoning Adjustments Board shall decide the appeal within thirty (30) days after its first hearing of the appeal. If the Board is unable to decide the appeal at that meeting, it shall

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appear for a vote on each regular meeting of the Board thereafter until decided. If the Board does not decide the appeal within the prescribed time period, the decision of the Hearing Officer shall be final.

The decision of the Zoning Adjustments Board on the appeal to the Conditions of Approval imposed by the Administrative Hearing Officer shall be final.

e. Appeal on the Revocation of a Land Use Permit or Deemed-Approved Status to City Council de Novo. Within ten calendar days after the date of a decision by the Zoning Adjustments Board to revoke the Land Use Permit or Deemed-Approved Status, an appeal may be taken to the City Council by any interested party. In the event that the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. The appeal shall be made on a form prescribed by the City and shall be filed with the City Clerk. The appeal shall state specifically why it is claimed there was an error or abuse of discretion by the Board or why its decision is not supported by the evidence in the record. Upon receipt of the appeal and the required appeal fee in accordance with Section \_\_\_\_\_ below, the Council shall set the date for its consideration. The City Clerk shall notify the Secretary of the Zoning Adjustments Board of the receipt of the appeal and of the date set for its consideration. The Secretary shall, not less than twenty-one (21) days before the hearing, give written notice to: the owner of the Activity; the property owner; the appellant; the adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as appropriate, of the time, date and place of the hearing on the appeal.

In considering the appeal, the Council shall determine whether the Activity conforms to the Performance Standards, and may approve or disapprove the revocation of the Land Use Permit or the Deemed-Approved Status, or require such changes therein or impose such reasonable Conditions of Approval as are in its judgment necessary to ensure conformity to the Performance Standards.

The decision of the City Council shall be made by resolution and shall be final. The City Council shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the Council is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the Council thereafter until decided. (Oakland DAO §15370, Santa Rosa DAO §10-06.080)

f. Illegal Activity. An Activity that has had its Land Use Permit or Deemed-Approved Status revoked shall no longer be considered a legal use of the building, structure, site, or portion thereof, and shall cease operation immediately.

g. Notification of Public Hearings. The Hearing Officer shall notify the owner of the Activity, and also the property owner, if not the same, of the time and place of the public hearing. Such notice shall be sent via certified return receipt mail, and shall include notification that the Activity's compliance with Performance Standards will be considered before the Hearing Officer. Notice by mail is deemed given on the date the notice is placed into the U.S. Mail system.

The hearing shall be noticed to the general public by posting notices within 300 feet of the subject property; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the City of Berkeley and all

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residents residing within 300 feet of the subject property. All such notices shall be given or posted not less than twenty-one (21) days prior to the date set for the hearing. Fees for notification shall be in accordance with Section \_\_\_\_\_ and paid for by the Activity in question.

A 20 inches by 30 inches notice, provided by the City, shall also be posted on the premises of the subject activity, placed in the window of the activity (if a window facing the street is not present, then posted on the exterior of the building).

All notices shall advertise the time, date, purpose and location of the public hearing.

### REFERENCES

City of Oakland Deemed-Approved Ordinance

City of Vallejo Deemed-Approved Ordinance

Neighborhood Law Corps Hearing Procedure Flow Chart

Model Store Recommendations

## 17. VIOLATIONS AND PENALTIES

a. **Infractions.** Any person who violates, causes, or permits another person to violate any provision of these Regulations is guilty of an infraction unless otherwise provided.

b. **Separate Offenses for Each Day.** Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of these Regulations is committed, continued, permitted, or caused by such violator and shall be punishable accordingly.

c. **Any Violation a Public Nuisance.** In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared to be a public nuisance and may be summarily abated as such by the City of Berkeley.

d. **Injunction as Additional Remedy.** Any violation of any provision of these Regulations shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the City of Berkeley, create a cause of action for injunctive relief.

e. **Penalties.** Any person convicted of an infraction under the provisions of this section shall be punishable by a fine to the maximum permitted under state law. Any violation beyond the second conviction within a one (1) year period may be charged by the City Attorney or District Attorney as a misdemeanor, and the penalty for conviction shall be punishable by a fine or imprisonment to the maximum permitted under state law.

f. **Liability for Expenses.** 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. Reinspection fees to ascertain compliance with previously noticed or cited violations shall be charged against the owner of the Alcoholic Beverage Sales Commercial Activity. Fees shall be in the amount described in Section \_\_\_\_\_ for charged reinspections. The inspection official shall give the owner or other responsible party of such affected premises a written notice showing the itemized cost of such chargeable service and requesting payment thereof. Should the bill not be paid in the required time, the charges shall be placed as a lien against the property.

The remedies provided by this Chapter are in addition to all other civil and criminal remedies available to the City with respect to violations of these regulations.

### REFERENCES

City of Oakland Deemed-Approved Ordinance, page 10, §15510.  
Government Code 38771 et seq

## 18. OFFICIAL ACTION

All officials, departments, and employees of the City vested with the authority to issue permits, certificates, or licenses shall adhere to, and require conformance with, these Regulations.

The officials responsible for enforcement of the Zoning Ordinance, or their duly authorized representatives shall require conformance with, these Regulations.

## 19. INSPECTION AND RIGHT OF ENTRY

The officials responsible for enforcement of the Zoning Ordinance, or their duly authorized representatives, may enter on any site or into any structure for the purpose of investigation, provided they shall do so in a reasonable manner, whenever they have cause to suspect a violation of any provisions of these Regulations, or whenever necessary to the investigation of violations to the Performance Standards or Conditions of Approval prescribed by these Regulations. An owner or occupant or agent thereof who refuses to permit such entry and investigation shall be guilty of infringing upon the Violations and Penalties as outlined in Section \_\_\_\_\_ and subject to related penalties thereof. If an owner, occupant or agent refuses permission to enter, inspect or investigate, the officials or their representatives may seek a warrant under the provisions of California Code of Civil Procedure section 1822.50 *et. seq.*

### REFERENCES

Code of Civil Procedure 1822.50 *et seq.*

## 20. PRIVATE RIGHT OF ACTION

*The purpose of this Section is to permit a private citizen to use this Chapter as a basis for filing suit against a property owner and/or business owner in the event the City does not take timely action against the property owner or the business owner for ongoing violations of these Regulations.*

a. Any Person acting for the interests of itself, its members or the general public (hereinafter “the Private Enforcer”) may bring a civil action to enforce this chapter. Upon proof of a violation, a court shall award to the Private Enforcer the following:

1. Damages in the amount of either:

i. upon proof, actual damages; or

ii. with insufficient or no proof of damages, \$\_\_\_\_\_ for each violation of this chapter (hereinafter “Statutory Damages”). Unless otherwise specified in this chapter, each day of a continuing violations shall constitute a separate violation. Notwithstanding any other provision of this chapter, no Private Enforcer suing on behalf of the general public shall recover Statutory Damages based upon a violation of this chapter if a previous claim brought on behalf of the general public for Statutory Damages and based upon the same violation has been adjudicated, whether or not the Private Enforcer was a party to that adjudication.

2. Restitution of the gains obtained in violation of this chapter.

3. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health.

b. The Private Enforcer may also bring a civil action to enforce this chapter by way of a conditional judgment or an injunction. Upon proof of a violation, a court shall issue a conditional judgment or an injunction.

c. Notwithstanding any legal or equitable bar against a Private Enforcer seeking relief on its own behalf, a Private Enforcer may bring an action to enforce this chapter solely on behalf of the general public. When a Private Enforcer brings an action solely on behalf of the general public, nothing about such an action shall act to preclude or bar the Private Enforcer from bringing a subsequent action based upon the same facts seeking relief on its won behalf.

d. Nothing in this chapter shall prohibit the Private Enforcer from bringing a civil action in small claims court to enforce this chapter, so long as the amount in demand and the type of relief sought are within jurisdictional requirements of small claims court as set forth in California Code of Civil Procedure section 116.220.

### REFERENCES

City of Santa Rosa Deemed-Approved Ordinance  
Private Health Institute’s Model Private Right of Action Provision for Local Tobacco Control Ordinances, revised January 2005

## 21. AUTHORITY TO ENACT ORDINANCE

This Ordinance is enacted pursuant to the City of Berkeley's general police powers, Section \_\_\_\_\_ of the Charter of the City of Berkeley, Article XI of the California Constitution, and the State of California Business and Professions Code §23790 and §23791.

### REFERENCES

California Constitution, Article XI.

Charter of the City of Berkeley.

State of California Business and Professions Code §23790 and §23791.

## 22. ENVIRONMENTAL DETERMINATION

The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines.

## 23. SEVERABILITY

If any section, sub-section, sentence, clause, phrase, or word of this ordinance is for any reason held to be invalid, the validity of the remaining portions of this ordinance shall not be affected.

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24. EFFECTIVE DATE

This ordinance shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

IN COUNCIL DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_, City Clerk

APPROVED: \_\_\_\_\_, Mayor

APPROVED AS TO FORM: \_\_\_\_\_, City Attorney