

## ORDINANCE NO. 7,383–N.S.

AMENDING BMC SECTION 23E.16.040 TO MODIFY ALCOHOLIC BEVERAGES  
FINDINGS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code 23E.16.040 Alcoholic Beverages is amended to read as follows:

**23E.16.040 Alcoholic Beverages**

A. No alcoholic beverage sales or alcoholic beverage service may be commenced or increased in any way unless authorized by a Use Permit, except that quick-service or full service food service establishments with incidental beer and/or wine service may be authorized by an Administrative Use Permit.

B. The following regulations apply to applications to commence or increase any alcoholic beverage sales or service, as defined in subdivision C, 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. If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in the City of Berkeley as verified by the Police Department, the Board shall determine whether such violations indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this determination, the Board may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors;

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

e. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.

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. An increase in alcoholic beverage uses or sales does not include extending the hours of operation of any food service establishments with incidental beer and/or wine service.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 21, 2014 this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.