

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 17 OF THE ORDINANCE CODE OF THE
COUNTY OF ALAMEDA TO REQUIRE CONDITIONAL USE PERMITS FOR
ALCOHOLIC BEVERAGE SALE ESTABLISHMENTS**

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Section 17.32.030 of Chapter 17.32 of Title 17 of the Ordinance Code of the County of Alameda is amended to read:

17.32.030 Conditional uses—Board of zoning adjustments.

The following are conditional uses in H-1 districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Retail store for the sale of gifts and supplies oriented to the needs of the patrons of hotels, motels and restaurants and of highway travelers;
- B. Commercial recreation facilities, if within an enclosed building;
- C. Plant nursery, greenhouse;
- D. Parking lot;
- E. Drive-in theatre, drive-in business;
- F. Service station, Type A and Type B;
- G. Motel, hotel;
- H. Recreational vehicle park, as regulated by Chapter 17.52 of this title;
- I. Boat and recreational vehicle storage yard;
- J. Alcohol outlet;
- K. Mobile outdoor businesses that directly serves the needs of the occupants, workers, patrons, or clients of existing businesses in the immediate vicinity;
- L. Tavern;

M. Alcoholic Beverage Sale Establishments, approved pursuant to Chapter 17.60.

SECTION II

Section 17.36.030 of Chapter 17.36 of Title 17 of the Ordinance Code of the County of Alameda is amended to read:

17.36.030 Conditional uses.

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in a C-N district and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Public utility substation, not including service yard, storage of materials, or vehicles, or repair facilities;
- B. Parking lot;
- C. Service station, Type A;
- D. Drive-in business;
- E. A facility retailing a variety of automotive parts and supplies which are installed and serviced on the site but does not include engine, transmission or differential rebuilding or body repair;
- F. Alcohol outlet;
- G. Indoor recreation facility;
- H. Alcoholic Beverage Sale Establishments, approved pursuant to Chapter 17.60.

SECTION III

Section 17.38.030 of Chapter 17.38 of Title 17 of the Ordinance Code of the County of Alameda is amended to read:

17.38.030 Conditional uses—Board of zoning adjustments.

The following are conditional uses in C-1 districts and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Animal hospital, kennel;

C. Clubhouse, or rooms used by members of an organized club, lodge, union or society;

D. Mortuary;

E. Commercial recreation facility other than a theatre, if within a building;

F. Storage garage, and storage lots for recreational vehicles and boats;

G. Theatre, drive-in theatre;

H. Drive-in business;

I. Hotel, motel, boarding house;

J. Automobile sales lot;

K. Service station, Type A; or a facility retailing automotive parts and supplies which are installed and serviced on the site but does not include, engine, transmission or differential rebuilding or body repair;

L. Plant nursery including the sale of landscaping materials, excluding wet-mix concrete sales providing all equipment, supplies, and merchandise other than plant materials are kept within a completely enclosed building;

M. Tavern;

N. Massage parlor;

O. Recycling centers, when operated in conjunction with a permitted use on the same premises;

P. Advertising signs, provided that no single sign shall be flashing or intermittent, contain moving parts or be located so as to be directed towards lands in any adjacent R district;

Q. In-patient and out-patient health facilities as licensed by the State Department of Health Services;

R. Tattoo studio;

S. Alcohol outlet;

T. Firearms sales;

U. Beauty school or business school;

V. Alcoholic Beverage Sale Establishments, approved pursuant to Chapter 17.60.

SECTION IV

Section 17.40.030 of Chapter 17.40 of Title 17 of the Ordinance Code of the County of Alameda is amended to read:

17.40.030 Conditional uses—Board of zoning adjustments.

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in C-2 districts and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

A. Animal hospital, kennel;

B. Mortuary;

C. Community facility;

D. Drive-in theatre, drive-in business; recreation facility;

E. Service station, Type A and Type B;

F. Automobile, camper, boat and trailer sales, storage or rental lot;

G. Plant nursery including the sale of landscaping materials, excluding wet-mix concrete sales, providing all equipment supplies and merchandise other than plant materials are kept within a completely enclosed building;

H. Auto sales and service agency;

I. Advertising sign, provided that no single sign shall exceed three hundred (300) feet in area and no sign shall be flashing or intermittent, contain moving parts or be located so as to be directed towards lands in any adjacent R district;

J. Tavern;

K. In-patient and out-patient health facilities as licensed by the State Department of Health Services;

L. Tattoo studio;

M. Alcohol outlets;

N. Firearms sales;

O. Trade school;

P. Alcoholic Beverage Sale Establishments, approved pursuant to Chapter 17.60.

SECTION V

Chapter 17.60 is added to Title 17 of the Ordinance Code of the County of Alameda to read as follows:

Chapter 17.60 ALCOHOLIC BEVERAGE SALE ESTABLISHMENTS – CUP

17.60.10 Purpose and Intent

The purpose and intent of this Chapter is to establish regulations and standards for locating and operating businesses that are engaged in the sale of alcoholic beverages, and to provide a process for the Board of Zoning Adjustments to consider and act upon conditional use permit applications for Alcoholic Beverage Sale Establishments pursuant to the provisions of this Chapter, Chapter 54, and all other applicable provisions of Title 17, county, state and federal law.

17.60.20 Findings

The Board of Supervisors finds that there exists in the unincorporated portion of Alameda County conditions associated with the sale of alcoholic beverages by establishments that are deleterious to the public health, safety, and general welfare, and constitute a public nuisance. The general purpose of this Chapter is to protect and promote the public health, safety, comfort, convenience and general welfare in the unincorporated area by requiring that an Alcoholic Beverage Sale Establishment be authorized to exist and conduct business only through the receipt of a conditional use permit issued by the County in conformity with the standards prescribed in this Chapter. Conditional use permits shall only be issued to Alcoholic Beverage Sale Establishments which prove that they can achieve the following objectives:

A. Protect residential, commercial, industrial, and civic areas and minimize the adverse impacts of activities that are deleterious to the public health, safety and general welfare;

B. Provide opportunities for alcoholic beverage sale commercial activities to operate in a mutually beneficial relationship to each other and to other

commercial and civic services;

C. Address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels;

D. Prevent alcoholic beverage sale commercial activities from being the source of undue public nuisances in the community; and

E. Properly maintain the Alcoholic Beverage Sale Establishment so that it does not generate negative impacts and is not harmful to the surrounding environment.

17.60.30 Definitions

The following words and phrases shall have the following meanings when used in this Chapter:

A. “License Type 41 restaurant” shall mean any alcoholic beverage sale establishment licensed by the Department of Alcoholic Beverage Control with an On Sale Beer & Wine – Eating Place Type 41 license.

B. “License Type 47 restaurant” shall mean an alcoholic beverage sale establishment licensed by the Department of Alcoholic Beverage Control with an On Sale General – Eating Place Type 47 license.

C. “License Type 67 or Type 80 bed and breakfast inn” shall mean an alcoholic beverage establishment licensed by the Department of Alcoholic Beverage Control with either a Bed and Breakfast Inn Type 67 or a Bed and Breakfast Inn – General Type 80 license.

D. “License Type 2 winery” shall mean an alcoholic beverage sale establishment licensed by the Department of Alcoholic Beverage Control with a Winegrower Type 2 license. This shall include wine tasting rooms.

E. “Substantial Change in Mode or Character of Operation” shall mean any alteration of the premises that would result in an increase of the existing gross floor area of the premises; or revocation or suspension of the license issued by the State of California Department of Alcoholic Beverage Control (ABC) for a period of more than 30 days for any reason; or conviction of the owner or ABC licensee for violations of California Health and Safety Code Sections 11350, 11351, 11352, 11550 or 11364.7, when the conviction relates to the premises or the operation of the establishment; or the discontinuation of active operation of the establishment for more than thirty (30) days.

F. “Alcoholic Beverage Sale Establishment” shall mean any retail establishment as defined in Chapter 6.104.040 of Title 6 of the Ordinance Code of the County of Alameda, but it shall not mean or include a License Type 2 winery (including wine tasting rooms), a License Type 41 restaurant, or a License Type 47 restaurant, provided they do not have a separate lounge or bar area, or a bar located within the restaurant seating area, or offer a “happy hour” or reduced drink prices, or a License Type 67 or 80 bed and breakfast inn.

G. “Undue Concentration” shall mean a situation where an applicant for any retail alcoholic beverage license or any licensed alcoholic beverage sale establishment is located in an area where the conditions described in Business and Professions Code Section 23958.4 or in Section 61.3(a) of Title 4 of the California Administrative Code exist.

H. “Findings of Overriding Consideration” shall mean specific findings that economic, legal, social or other benefits of issuing the conditional use permit outweigh the potential negative effects intended to be eliminated by the prohibitions in Section 17.60.70 titled “Grounds for Denial.”

17.60.40 Conditional Use Permit Required of New or Modified Alcoholic Beverage Sale Establishments

Except as otherwise provided herein, no person shall establish a new Alcoholic Beverage Sale Establishment or substantially change the mode or character of operation of an existing Alcoholic Beverage Sale Establishment without first obtaining a use permit in the manner provided by this Chapter. However this chapter shall not apply to a License Type 2 winery (including wine tasting rooms), a License Type 41 restaurant, or a License Type 47 restaurant, provided they do not have a separate lounge or bar area, or a bar located within the restaurant seating area, or offer a “happy hour” or reduced drink prices, or to a License Type 67 or 80 bed and breakfast inn.

17.60.50 Operation, Performance and Education Standards

All Alcoholic Beverage Sale Establishments, including an establishment that is subject to the requirements of this Chapter, shall also comply with Chapter 6.104 of the Ordinance Code. In considering a conditional use permit application, the Board of Zoning Adjustments may impose additional standards as conditions of approval.

17.60.60 Criteria for Review

In granting a conditional use permit for the sale of alcoholic beverages and making the findings required for conditional use permit approval by this

Section, the Board of Zoning Adjustments shall:

A. Consider whether the use serves public convenience or necessity pursuant to Section 6.104.240 titled "Finding of Public Convenience and Necessity".

B. Consider whether the site plan and floor plan incorporate design features to assist in reducing alcohol related problems. These features may include, but are not limited to, openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

C. Shall prohibit the advertising of alcohol, other than on the menu.

D. Shall prohibit exterior public pay phones that permit incoming calls on the premises, adjacent public sidewalks, or areas under the control of the owner or operator.

E. Shall require that any and all lighting for landscaping, driveways, security, outdoor accessory structures, and proposed structures shall be designed, installed, and operated so as not to radiate or emit glare towards the neighboring residences. Lighting shall be oriented internally toward the site. The illumination intensity of lighting shall be sufficient only for the intended purpose and neither excessive nor unnecessary. Prior to issuance of Building Permits the applicant shall submit an Outdoor Lighting Plan (to include but not limited to light fixture location, light intensity and distribution, lighting fixture specifications) for review and approval by the Planning Director.

F. Shall require the owner or operator of the premises to maintain adjacent public sidewalks and areas under the control of the owner or operator free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. The owner or operator shall eliminate graffiti within 48 hours of application.

G. Shall require the owner or operator of the premises to maintain the facade and premises in good condition and upgrade them regularly, or when necessary, including replacement of broken business signs.

17.60.70 Grounds for Denial

Unless it finds that there are Overriding Considerations in favor of issuing the conditional use permit and adopts Findings of Overriding Consideration to that effect, the Board of Zoning Adjustments shall deny

the conditional use permit if they find that any of the following exist:

A. The Department of Alcoholic Beverage Control makes the written determination that the proposed Alcoholic Beverage Sale Establishment would contribute to an undue concentration of alcohol establishments in the area and is therefore denying the application.

B. The Alcoholic Beverage Sale Establishment would be located within a 750 foot radius (measured property line to property line) of another Alcoholic Beverage Sale Establishment, Tavern, Alcohol Outlet, or nonconforming alcohol beverage sales use.

C. The Alcoholic Beverage Sale Establishment would be located within a 750 foot radius (measured property line to property line) of schools, daycare facilities, places of worship, parks, or libraries.

17.60.80 Grounds for Modification or Revocation

The Board of Zoning Adjustments may require modification, discontinuance or revocation of a conditional use permit if it finds that the Alcoholic Beverage Sale Establishment is operated or maintained in a manner that:

A. Adversely affects the health, peace or safety of persons living or working in the surrounding area; or

B. Contributes to a public nuisance; or

C. Violates any provision of the conditional use permit, the County Ordinance Code or condition imposed by any County permit, or violates any provision of any other local, State or Federal law, regulation, or order, including those of the Department of Alcoholic Beverage Control, or violates any condition imposed by permits issued in compliance with those laws.

17.60.90 Posting of Conditions of Approval

Every owner of an Alcoholic Beverage Sale Establishment issued a conditional use permit pursuant to the provisions of this chapter shall post a copy of all performance standards, education requirements and any special conditions of the permit in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

SECTION VI

This ordinance amendment shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on _____, 2011, by the following called vote:

AYES:

NOES:

EXCUSED:

President of the Board of Supervisors
County of Alameda, State of California

ATTEST: CRYSTAL K. HISHIDA-GRAFF, Clerk
of the Board of Supervisors, County of Alameda

By: _____

Approved as to form:
RICHARD E. WINNIE, County Counsel

By: _____