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OAKLAND CITY COUNCIL
ORDINANCE NO. ~~13527~~ 13527 C.M.S.

**AN ORDINANCE AMENDING THE PLANNING CODE (TITLE 17) TO
UPDATE REGULATIONS FOR RESTAURANTS SERVING ALCOHOLIC
BEVERAGES, UNDER CHAPTERS 17.09, 17.10, 17.103, 17.134 AND 17.156, AS
RECOMMENDED BY THE PLANNING COMMISSION**

WHEREAS, under the City of Oakland Planning Code at Title 17 of the Oakland Municipal Code (“Planning Code”), bars and liquor stores, due to historic issues with their community impacts at certain locations, are subject to discretionary review in order to establish a new premises; and

WHEREAS, under the Planning Code, restaurants located along certain corridors or “restricted streets” are currently regulated due to previous, neighborhood-specific concerns, in a manner similar to that of a bar or liquor store; and

WHEREAS, the City currently regulates restaurants providing a “Limited Service and Café” format rather than a Full-Service Restaurant service similar to a bar or liquor store by requiring a Conditional Use Permit; and

WHEREAS, the State of California Department of Alcoholic Beverage Control (ABC) does not, for purposes of alcoholic beverage regulation, distinguish between restaurants that offer a Full-Service Restaurant Service format and those that offer a Limited-Service and Café format; and

WHEREAS, the number of restaurants in Oakland continues to increase with no known negative consequences; and

WHEREAS, many new and existing restaurants in Oakland operate under a Limited-Service Restaurant and Café format due to issues such as operating expenses, with no known negative consequences; and

WHEREAS, many new and existing restaurants in Oakland wish to offer their customers alcoholic beverage options, but find that the discretionary review and permitting process is too onerous and costly to be a viable option; and

WHEREAS, the City has granted several variances for Limited-Service Restaurants and Cafes to serve alcoholic beverages with no known negative consequences; and

WHEREAS, other City regulations for alcoholic beverage establishments such as wineries and brewers have been updated to conform to current trends, also with no known negative consequences; and

WHEREAS, the proposed amendments to the Planning Code rely on the previously certified Final Environmental Impact Reports for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "EIRs"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment); and now, therefore,

BE IT RESOLVED:

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

SECTION 1. Recitals. The Council of the City of Oakland finds and determines the foregoing recitals to be true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2. Amendments to Relevant Provisions of the Oakland Planning Code (Title 17) Sections 17.09.040, 17.10.040, 17.10.272, 17.10.274, 17.103.030, 17.134.020, and 17.156.070. The Oakland Planning Code (Title 17) Sections 17.09.040, 17.10.040, 17.10.272, 17.10.274, 17.103.030, 17.134.020, and 17.156.070 are hereby amended as follows (additions are shown as underline and deletions are shown as ~~strikethrough~~), with only the relevant portions of the Sections shown below:

Chapter 17.09 DEFINITIONS

Section:

7.09.040 Definitions.

"Full-service restaurant" means a place ~~that which~~ 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 ~~which~~ has suitable kitchen facilities connected therewith, 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. Also, see Sections 17.10.272 and 17.156.070.

Chapter 17.10 USE CLASSIFICATIONS

Articles and Sections:

Article I - General Classification Rules

17.10.040 Accessory activities.

In addition to the principal activities expressly included therein, each activity type shall be deemed to include such activities as are customarily associated with, and are appropriate,

incidental, and subordinate to, such a principal activity; are located on the same lot as such principal activity except as otherwise provided in Subsections A., J., and K. of this Section; and meet the further conditions set forth hereinafter. Such accessory activities shall be controlled in the same manner as the principal activities within such type except as otherwise expressly provided in the zoning regulations. Such accessory activities include, but are not limited to, the activities indicated below, but exclude the sale of alcoholic beverages to the general public except at a ~~F~~full-S~~S~~ervice R~~R~~estaurant, Limited-Service Restaurant and Cafe, or ~~at an alcoholic beverage manufacturer~~, as described in Sections 17.10.272, 17.10.274, 17.10.550, and 17.10.560, and subject to the standards in Section 17.103.030. (See also Section 17.10.050 for additional activities included within activity types in the case of combinations of different principal activities.)

Article II - Activity Types

Part 3 Commercial Activity Types

17.10.272 Full-Service Restaurant Commercial Activities.

17.10.274 Limited-Service Restaurant and Cafe Commercial Activities.

17.10.300 Alcoholic Beverage Sales Commercial Activities.

17.10.272 Full-Service Restaurant Commercial Activities.

Full-Service Restaurant Commercial Activities include the provision of food or beverage services to patrons who order and are served while seated (table service), and pay after eating. Only a minor proportion, if any, of the food is sold for consumption off-premises. These restaurants have kitchens that contain equipment suitable for cooking an assortment of foods; and may include service of liquor, beer and/or wine, subject to the standards in Section 17.103.030. Also, see Sections ~~7.103.130 and 17.156.070~~ for definitions of a ~~F~~full-S~~S~~ervice R~~R~~estaurant in relation to the Deemed Approved Alcoholic Beverage Sale regulations. Alcoholic Beverage Sales. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

17.10.274 Limited-Service Restaurant and Cafe Commercial Activities.

Limited-Service Restaurant and Cafe Commercial Activities include the provision of food or beverage services to patrons that generally order and pay at a service counter before eating. Food and beverages may be served in disposable containers and may be consumed on the premises or taken out. Seating for on-premises consumption is usually available and table service may or may not be provided. These restaurants may include service of beer and/or wine, subject to the standards in Section 17.103.030. Examples of these activities include, but are not limited to, cafes and restaurants that do not fall under Section 17.10.272 Full-Service Restaurant Commercial Activities, or Section 17.10.280 Fast-Food Restaurant Commercial Activities. Also, see Section 17.156.070 for definition of a Limited-Service Restaurant and Cafe in relation to the Deemed Approved Alcoholic Beverage Sale regulations. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

17.10.300 Alcoholic Beverage Sales Commercial Activities.

Alcoholic Beverage Sales Commercial Activities include the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, but exclude ~~full-service restaurants~~ Full-Service Restaurants, Limited-Service Restaurants and Cafes, and alcoholic beverage manufacturers that comply with their respective definition in Sections 17.10.272, 17.10.274, and 17.103.030. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

Chapter 17.103 SPECIAL REGULATIONS AND FINDINGS FOR CERTAIN USE CLASSIFICATIONS

Article and Sections:

Article III Commercial Activities

17.103.030 Fast-Food Restaurant, and Convenience Market Commercial Activities, and Establishments Selling Alcoholic Beverages. ~~Sales Commercial Activities.~~

- A. Use Permit Criteria for Fast-Food Restaurants, Convenience Markets, and Establishments Selling Alcoholic Beverages. A Ceonditional Uuse Ppermit for any conditionally permitted Fast-Food Restaurant, Convenience Market, or Alcoholic Beverage Sales Commercial Activity may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the Ceonditional Uuse Ppermit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following additional use permit criteria:
7. That where the proposed use 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 10:00 p.m. and 7:00 a.m.; ~~The same criteria shall apply to all conditional use permits required by Subsection B. of this Section for sale of alcoholic beverages at full-service restaurants;~~
- B. Special Restrictions on Establishments Selling Alcoholic Beverages.
1. No Alcoholic Beverage Sales Commercial Activity or sale of alcoholic beverages shall be located closer than one thousand (1,000) feet to any other establishment selling alcoholic beverages ~~Alcoholic Beverage Sales Commercial Activity~~ measured between closest building walls, except:
 - b. Off-sale retail licenses located in the Jack London Ddistrict (defined for the purposes of this Chapter only as within the boundaries of Martin Luther King Jr. Way to the west, I-880 to the north; the Lake Merritt Channel to the east; and the Estuary to the south); or
 - c. If the activity is in conjunction with a Full-Service Restaurant or Limited-Service Restaurant and Cafe Commercial Activity; or
 - d. Establishments with twenty-five (25) or more full time equivalent (FTE) employees or a total floor area of twelve thousand (12,000) square feet or more.;
or
 2. ~~Sale of alcoholic beverages in conjunction with a Full Service Restaurant Commercial Activity and located within any of the following restricted street areas~~

~~applied to a depth of two hundred (200) feet on each side of the identified streets and portions of streets, as measured perpendicularly from the right of way line thereof: International Boulevard; Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying between Interstate 980 and 580; that portion of Edes Avenue lying between Clara Street and Bergedo Drive, shall require a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.~~

23. In addition to the criteria prescribed elsewhere in the zoning regulations, a land use permit for an Alcoholic Beverage Sales Commercial Activity located within an Alcoholic Beverage Sales license overconcentrated area shall only be granted, and a finding of Public Convenience or Necessity made, if the proposal conforms to all of the following ~~three (3)~~ criteria:
34. In addition to the above criteria, projects outside of the Central District, the Hegenberger Road Corridor, and the D-CO-2 and D-CO-3 Zones shall meet all of the following criteria to make a finding of Public Convenience or Necessity, with the exception of those projects that will result in twenty-five (25) or more full time equivalent (FTE) employees and will result in a total floor area of twelve thousand (12,000) square feet or more:
- a. The proposed project is not within one thousand (1,000) feet of another alcohol outlet (not including Full-Service Restaurant and Limited-Service Restaurant and Cafe Commercial Activities), school, licensed day care center, public park or playground, churches, senior citizen facilities, and licensed alcohol or drug treatment facilities; and
 - b. Police department calls for service within the "beat" where the project is located do not exceed by twenty percent (20%), the average of calls for police service in police beats Citywide during the preceding one (1) calendar year.
45. See Chapter 17.156 for Deemed Approved Alcoholic Beverage Sale regulations.
5. Standards for Limited-Service Restaurant and Cafe Commercial Activities that include the service of alcoholic beverages:
- a. Hours of operation shall not exceed a closing time of 12:00 a.m., unless a Cabaret Permit is obtained.
 - b. Food service shall be offered at all times the Limited-Service Restaurant or Cafe is open, with the exception that the establishment may elect to close the kitchen one hour prior to closing.
 - c. Minors shall be admitted at all times, unless a Cabaret Permit is obtained.
 - d. No admission shall be charged, unless a Cabaret Permit is obtained.
 - e. Window clarity shall be maintained at or restored to seventy-five percent (75%) minimum.
 - f. Floor plan shall depict a dining area and no bar.
 - g. Off-sale (retail bottle sales of beer and / or wine) shall be considered with to-go food orders after a period of six (6) months of operation by same operator and upon completion of a satisfactory administrative compliance review.
 - h. Sale of alcoholic beverages shall not exceed fifty percent (50%) of total revenues.
 - i. That where the proposed use is abutting and facing 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 10:00 p.m. and 7:00 a.m.

6. Applicants for projects involving alcohol sales are encouraged to conduct outreach early in the permit review process, including but not limited to, contact with the City Council District Office, Neighborhood Crime Prevention Council/NCPC (can be contacted through the City's Neighborhood Service Coordinators), merchant groups, and any other applicable neighborhood groups. Outcomes should be reported to the Planning Bureau in writing.

Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE

Section:

17.134.020 Definition of Major and Minor Conditional Use Permits.

- A. **Major Conditional Use Permit.** A Conditional Use Permit (CUP) is considered a Major Conditional Use Permit if it involves any of the following:
2. **Uses.** Any project requiring a Conditional Use Permit that involves any of the following activity or facility types except where the proposal involves only accessory parking, the resumption of a discontinued nonconforming activity, or an addition to an existing activity which does not increase the existing floor area by more than twenty percent (20%):
 - a. **Activities:**
 - iv. **Fast-Ffood Restaurant Commercial;**
 - vi. **Alcoholic Beverage Sales Commercial, ~~or sale of alcoholic beverages at any full-service restaurant in a location described by Subsection 17.103.030.B;~~**

Chapter 17.156 DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS

Article and Section:

Article II Definitions

17.156.070 Definitions.

As used in this Chapter:

"Alcoholic Beverage Sales Commercial Activity" means the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, excluding Full-Service Restaurants and Limited-Service Restaurants and Cafes that comply with the below-listed definition of Full-Service Restaurant or Limited-Service Restaurant and Cafe.

"Full-Service Restaurant" means a place which 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 which has suitable kitchen facilities connected therewith, 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 under the Deemed Approved Program, the establishment must meet the following criteria:

1. A "Full-Service Restaurant" ~~"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 served alcohol without "meal" service being provided with the exception that alcohol sales to restaurant patrons may continue for up to two (2) hours after meal service has ceased to allow guests to comfortably complete their meals.
3. The "offer" of "meals" is not adequate to meet the above criteria. A "Full-Service Restaurant" ~~"full-service restaurant"~~ shall make actual and substantial sales of "meals" to guests for compensation. Substantial sales shall mean that no less than sixty percent (60%) of total revenue shall be generated from food service and no more than forty percent (40%) of revenue from the sales of alcohol.
6. A Full-Service Restaurant ~~full-service restaurant~~ shall comply with all local health department standards.
7. A Full-Service Restaurant ~~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 State Department of Alcoholic Beverage Control (ABC) regulations do not conflict with the above criteria, a Full-Service Restaurant ~~full-service restaurant~~ shall comply with all ABC regulations related to "Bona fide public eating place, meals."

"Legal Nonconforming Alcoholic Beverage Sales Commercial Activity" or "Legal Nonconforming Activity" means an Alcoholic Beverage Sales Commercial Activity which was a nonconforming use pursuant to the Nonconforming Use Regulations in Chapter 17.114, and 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 prior to the effective date of the Deemed Approved Alcoholic Beverage Sale regulations. Such an Activity shall be considered a Deemed Approved Activity, and shall no longer be considered a Legal Nonconforming Activity, except such activity shall be subject to those zoning regulations relating to nonconforming uses as specified in Section 17.156.040C, as of the effective date of the Deemed Approved Alcoholic Beverage Sale regulations.

"Limited-Service Restaurant and Café" means a place that provides food or beverage services to patrons that generally order and pay at a service counter before eating. Food and beverages may be served in disposable containers and may be consumed on the premises or taken out. Seating for on-premises consumption is usually available and table service may or may not be provided. Examples of these activities include, but are not limited to, cafes and restaurants that do not fall under the definition of "Full-Service Restaurant" as used in this Chapter; or the definition of Full-Service Restaurant Commercial Activities, as specified in Section 17.10.272, or Fast-Food Restaurant Commercial Activities, as specified in Section 17.10.280.

"Restricted street" means that area applied to a depth of two hundred (200) feet on each side of and including the following streets and portions of streets, as measured perpendicularly from the right-of-way line thereof: International Boulevard; Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying between Highway 1-980 and 1-580; that portion of Edes Avenue lying between Clara Street and Bergego Drive.

SECTION 3. California Environmental Quality Act. The City Council has reviewed the proposed amendments to the Oakland Planning Code and independently finds and determines that the proposed amendments to the Planning Code rely on the previously certified Final

Environmental Impact Reports for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "EIRs"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

SECTION 4. Undertaking for the General Welfare. In enacting and implementing this Ordinance, the City of Oakland is assuming an undertaking to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

SECTION 5. Authority. This Ordinance is enacted by the City Council pursuant to the police powers accorded to the City by and through Section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

SECTION 6. Severability. The provisions of this Ordinance are severable, and if any article, section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of remaining portions of the Ordinance which shall remain in full force and effect.

SECTION 7. Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately on final adoption if it receives six (6) or more affirmative votes on final adoption. Otherwise, it shall become effective upon the seventh day after final adoption.

SECTION 8. Conflict. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 02 2019

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, ~~GIBSON~~ ~~MCLELLANE~~, ~~KALB~~, REID, TAYLOR, THAO AND PRESIDENT KAPLAN - 7

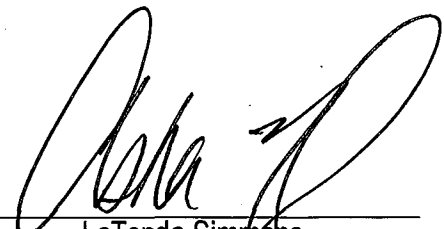
NOES - 0

ABSENT 0

ABSTENTION - 0

Excused - 1 McElhenny
Introduction Date
MAR 21 2019

ATTEST:


LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

NOTICE AND DIGEST

AN ORDINANCE AMENDING THE PLANNING CODE (TITLE 17) TO UPDATE REGULATIONS FOR RESTAURANTS SERVING ALCOHOLIC BEVERAGES, UNDER CHAPTERS 17.09, 17.10, 17.103, 17.134 AND 17.156, AS RECOMMENDED BY THE PLANNING COMMISSION

The Ordinance amends the Planning Code Regulations relating to the sale of alcoholic beverages for Limited-Service Restaurants and Cafes and Full-Service Restaurants located along certain corridors where the sale of alcoholic beverages therein have been previously restricted. These proposed Planning Code amendments for these restaurants serve to relieve these restaurants of the need for further discretionary approvals to serve certain alcoholic beverages, which will in turn make their businesses more viable.