

ORDINANCE NUMBER O- 18229 (NEW SERIES)

ADOPTED ON NOV 20 1995

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1, DIVISION 5, OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING AND REENACTING SECTION 101.0515 RELATING TO ALCOHOLIC BEVERAGE ESTABLISHMENTS.

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

Section 1. That Chapter X, Article 1, Division 5, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 101.0515.

Section 2. That Chapter X, Article 1, Division 5, of the San Diego Municipal Code be and the same is hereby amended by adding a new Section 101.0515, to read as follows:

SEC. 101.0515 ALCOHOLIC BEVERAGE OUTLETS

A. PURPOSE AND INTENT

The purposes of Section 101.0515 are:

1. To help mitigate the problems sometimes associated with commercial buildings offering alcohol for sale for off-site consumption, including problems related to unacceptable public behavior, noise, littering, loitering, crime and violence, interference with pedestrians using the sidewalks, excessive signage, defacement and damaging of structures and the public right of way, discouragement of more desirable and needed

commercial uses, deterioration of a neighborhood's quality of life and image, and other similar problems and nuisances connected primarily with the operation of such establishments;

2. To protect the health, safety and general welfare of minors, residents, businesses, property owners, visitors and workers of the City of San Diego;

3. To provide the basis for making a finding of "public convenience and necessity" consistent with State law; and

4. To ameliorate undesirable community impacts of Alcoholic Beverage Outlets by restricting their location and by imposing reasonable conditions upon the development and operation of such uses citywide.

Section 101.0515 is not intended to effect any provisions in the Code regarding the regulation of businesses that sell Alcoholic Beverages for consumption on the premises.

The standards included in Section 101.0515 address the location, development, and operation of Alcoholic Beverage Outlets in the City of San Diego, and shall serve as the minimum performance guidelines for the City's review of proposals.

B. CONFLICTS

If there is a conflict between the provisions of Section 101.0515 and any other municipal laws or

regulations, the provisions of Section 101.0515 shall control.

C. DEFINITIONS

For purposes of Section 101.0515:

"Alcoholic Beverage Outlet" means any establishment for which either a Type 20 (Beer and Wine) or a Type 21 (General liquor) license has been obtained or for which an application has been submitted to the California Department of Alcoholic Beverage Control ("ABC"). "Alcoholic Beverage Outlets" include liquor stores, grocery stores and other retail establishments that sell alcoholic beverages for off-site consumption.

"Alcoholic Beverage" has the same meaning as provided in Section 33.0202 of this Code.

D. CONDITIONAL USE PERMIT REQUIRED

Except as provided in Sections 101.0515(F), 101.0515(N), 101.0515(O), and 101.0515(P), it is unlawful for any Alcoholic Beverage Outlet to sell or offer to sell Alcoholic Beverages for any consideration, without first obtaining a Conditional Use Permit ("CUP") from The City of San Diego.

E. APPLICATION

An application to operate a proposed Alcoholic Beverage Outlet shall be filed with the Development Services Department in accordance with Municipal Code section 111.0202. The applicant shall submit the requested documentation, and the appropriate processing

fee, as specified in The City of San Diego's schedule of fees/deposits.

F. PROCESS ONE APPROVAL

An application to operate a proposed Alcoholic Beverage Outlet shall be approved in accordance with Process One if the project complies with all the standards included in Section 101.0515(N).

G. WHEN A CUP IS REQUIRED

If the project does not comply with all the standards included in Section 101.0515(N), then a CUP is required.

H. PROCEDURE FOR OBTAINING A CUP

An application for a CUP may be approved, conditionally approved, or denied by a Hearing Officer in accordance with Process Three. The decision of the Hearing Officer may be appealed to the Board of Zoning Appeals in accordance with Municipal Code section 111.0506.

I. CONDITIONAL USE PERMIT

1. Findings.

The Hearing Officer may approve or conditionally approve an application for a CUP for an Alcoholic Beverage Outlet if all of the following findings are made:

- a. The proposed use is consistent with the policies, goals and objectives of the applicable Land Use Plan or Local Coastal Program; and

b. The proposed use will not be detrimental to the health, safety and general welfare of persons living or working in the area; and

c. The proposed use is consistent with the purpose and intent of the zone; and

d. The proposed use, as may be conditioned, is appropriate at this location; and

e. The proposed use will serve a public convenience or necessity.

2. Permit Conditions.

The Hearing Officer may impose conditions on the granting of the permit. A copy of the CUP's conditions of approval shall be kept on the premises of the Alcohol Beverage Outlet and posted in a place where it may be readily viewed by any employee, member of the general public or member of a governmental agency. The Hearing Officer may impose conditions relating to one or more of the following:

a. Entertainment uses, activities, or amusement devices on the premises; or

b. Separation, monitoring, or design of area devoted to alcohol sales; or

c. Hours of operation of the business;
or

d. Security measures; or

e. Lighting, litter, graffiti or nuisance abatement, or any other similar requirements necessitated by the business premises; or

f. Maintenance and security provisions if the business is abandoned or discontinued.

3. Police Department Recommendation.

The San Diego Police Department shall provide the Hearing Officer with a recommendation on a particular CUP application with respect to the proposed use and location. The Hearing Officer shall provide the applicant with a copy of the Police Department's recommendation at least seven (7) calendar days before the date of the public hearing. The Hearing Officer shall review and consider the Police Department's recommendation or report, if any, before rendering a decision on the application.

4. City Recommendation to ABC.

The Hearing Officer may request that the ABC impose restrictions on any alcohol sales license that they issue. The City's request shall be based on an evaluation of conditions in an area, including the concentration of Alcoholic Beverage Outlets, high crime rates, or any other conditions in the area that would be aggravated by the sale of Alcoholic Beverages in the immediate neighborhood.

J. EXPIRATION OF CUP

The Hearing Officer shall specify the date when the CUP will expire, a date not less than ten (10) years from the approval date.

K. EXTENSION OF CUP

1. Application.

Any request for an extension shall be filed with the Development Services Department prior to the expiration date of the approved CUP.

2. Decision.

a. An application for extension of a CUP may be granted or conditionally granted only if the findings in Section 101.0515(I) are made, or the CUP may be denied.

b. An extension may be granted in accordance with Process Two, if there is no record in the City's Police Department, or in any other City department or governmental agency, of any violations of ABC rules, regulations and orders, or of any violation of City, County, State or Federal law, code, regulation or policy related to prostitution, drug activity or other criminal activity on the premises.

c. An application for an extension of a CUP may be conditionally extended or denied by the Hearing Officer in accordance with Process Three if there is a change of

circumstance or a record of violations as set forth in Section 101.0515(K) (2) (b).

d. Prior violations of any conditions contained in a CUP, or any evidence which results in a determination that any Section 101.0515(I) finding is not met, shall constitute grounds for denying an extension.

L. ENFORCEMENT OF CUP

The property owner and the applicant shall maintain and operate the business in compliance with the permit and conditions at all times or enforcement shall be initiated per San Diego Municipal Code Chapter 1, Article 1.

M. REVOCATION OF CUP

A CUP granted pursuant to Section 101.0515 shall be subject to revocation in the manner provided by Sections 111.0601, 111.0602, and 111.0603.

N. STANDARDS FOR PROCESS ONE APPROVAL

Notwithstanding the provisions of Section 101.0515(D), an Alcoholic Beverage Outlet shall be approved by Process One, if:

1. The granting of an Alcohol Beverage Outlet permit is consistent with the permitted uses and property development regulations of the zone and the owner or operator complies with all other applicable City regulations; and

2. The Alcohol Beverage Outlet meets, or the owner or operator of the Alcohol Beverage

Outlet agrees in writing to be bound by, the following standards:

a. The Alcohol Beverage Outlet is not located within a census tract or within six hundred (600) feet of a census tract where the general crime rate exceeds the citywide average general crime rate by more than twenty percent (20%); and

b. The Alcohol Beverage Outlet is not located within a census tract or within six hundred (600) feet of a census tract where the ratio of Alcohol Beverage Outlets exceeds the standards established by California Business and Professional Code section 23958.4; and

c. The Alcohol Beverage Outlet is not located in an adopted Redevelopment Project Area; and

d. The Alcohol Beverage Outlet is at least six hundred (600) linear feet from any public or private accredited school, public park, playground or recreational area, church, hospital, or County welfare district offices; and

e. The Alcohol Beverage Outlet is at least one hundred (100) linear feet from any residential zone boundary; and

f. The Alcohol Beverage Outlet does not provide pool or billiard tables, foosball or pinball games, arcade style video or electronic games, or coin operated amusement devices on the premises; and

g. The Alcohol Beverage Outlet posts a prominent, permanent sign or signs stating "No loitering, consumption, or open alcoholic beverage containers are allowed inside the premises, in the parking area, or in the public sidewalks adjacent to the premises"; and

h. The Alcohol Beverage Outlet does not permit the placing of exterior public pay phones that permit incoming calls on the premises including adjacent public sidewalks and areas under the control of the applicant; and

i. The Alcohol Beverage Outlet lists a business address and telephone number in the Pacific Bell/San Diego telephone directory or other similarly distributed directory; and

j. The Alcohol Beverage Outlet has trash receptacles inside and outside the premises including adjacent public sidewalks and areas under the control of the applicant, conveniently located for use by patrons. A minimum of one 13-gallon trash receptacle

shall be located inside the premises, and a minimum of one 32-gallon trash receptacle shall be located outside the premises, and at least one additional 32-gallon trash receptacle shall be conveniently and legally located in the parking areas under the control of the applicant; and

k. Illumination is provided on the exterior of the premises including adjacent public sidewalks and areas under the control of the applicant, and is in operation during all hours of darkness while the outlet is open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. The minimum level of illumination of the premises shall be 0.4 foot candles per square foot. The required illumination shall be shielded and directed so as to not shine on adjacent properties; and

l. The exterior of the premises, including adjacent public sidewalks and areas under the control of the owner or operator are maintained 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 agrees to

eliminate graffiti within forty-eight (48) hours of application; and

m. No more than thirty-three percent (33%) of the square footage of the windows and transparent doors of the premises bear advertising or signs of any sort, and all advertising and signage are placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the outlet; and

n. The total surface of signage pertaining to or referencing alcoholic sales or beverages which is visible from the public right-of-way do not exceed six hundred thirty square inches (630 sq. in.).

3. Distance measurements.

a. Standard. The distances contained in Section 101.0515(N)(2) shall be measured along a straight line from property line to property line.

b. Exceptions. A separation distance less than required by Section 101.0515(N)(2) may be approved by the City Manager or designee due to the existence of natural or man-made barriers such as topography, freeways, flood control channels, rivers and similar divisive features.

O. EXEMPTIONS

The following Alcohol Beverage Outlets and areas are exempt from the provisions of Section 101.0515.

1. Hotels, motels, or any other lodging establishment where the sale of alcoholic beverages for off-site consumption is an accessory or incidental use to the primary operation of the business.

2. Establishments of greater than 15,000 square feet of floor area, provided that alcohol sales are accessory or incidental to the primary operation of the business.

"Accessory" or "incidental" means that the area devoted to alcohol products or sales does not exceed ten percent (10%) of the gross floor area of the entire premises.

3. The Gaslamp Quarter Planned District.

P. EXISTING OUTLETS

Alcohol Beverage Outlets that were in existence on December 20, 1995, may continue to operate under the following conditions:

1. The Alcohol Beverage Outlet retains the same type of retail liquor license within a license classification.

2. The Alcohol Beverage Outlet is operated continuously without substantial change in the mode or character of operation.

For the purpose of Section 101.0515(P)(2), a break in continuous operation does not include the suspension of business due to an Act of God, or other similar extraordinary circumstances beyond the control of the licensee; or a closure for more than one hundred eighty (180) days, during the diligent pursuance of building repairs or remodeling of the premises undertaken under the authority of a valid building permit.

For purposes of Section 101.0515(P)(2), "substantial change in mode or character of operation" includes, but is not limited to any of the following:

a. The Alcohol Beverage Outlet is closed, abandoned, discontinued or suspended for a continuous period of more than one hundred eighty (180) days; or

b. The premises are altered for the purpose of increasing the gross floor area and such additions will result in an aggregate increase of more than ten percent (10%) of the total existing gross floor area of the entire premises; or

c. The license issued by the California Department of Alcoholic Beverage Control ("ABC") is revoked, or suspended for a period of more than thirty (30) days for any reason; or

d. The owner or operator, or the ABC licensee, is convicted of violations of California Health and Safety Code sections 11350, 11351, 11352, 11550 or 11364.7; or California Penal Code section 647(b), and the conviction relates to the business premises or the operation of the business.

Section 3. The City Clerk is hereby instructed to insert the effective date of this ordinance, once known, into the blank space provided in Section 101.0515(P).

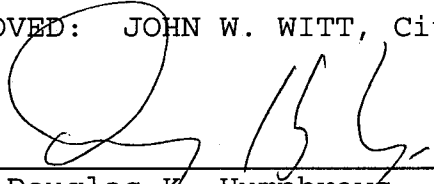
Section 4. The City Manager is hereby directed to return to the Council in one year with a status report on how the ordinance is working and if there are any problems with it.

Section 5. This ordinance shall take effect and be in force on the thirtieth day from and after its passage, however, the provisions of this ordinance shall not be applicable within the Coastal Zone until the thirtieth day following the date the California Coastal Commission unconditionally certifies this ordinance as a local coastal program amendment. If this ordinance is not certified, or is certified with suggested modifications by the California Coastal Commission, the provisions of this ordinance shall be null and void within the Coastal Zone.

Section 6. In areas of the City of San Diego other than the Coastal Zone no permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefor was made prior to the date of adoption of this ordinance.

Section 7. Within the Coastal Zone no permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefor was made prior to the date the California Coastal Commission unconditionally certified this ordinance as a local coastal program amendment.

APPROVED: JOHN W. WITT, City Attorney

By 

Douglas K. Humphreys
Deputy City Attorney

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