

THIS IS A DRAFT ORDINANCE SUBJECT TO REVIEW AND APPROVAL BY THE CITY ATTORNEY AS TO FORM AND LEGALITY. FURTHER REVISIONS COULD INCLUDE BOTH NON-SUBSTANTIVE AND SUBSTANTIVE REVISIONS. SUBSTANTIVE REVISIONS WILL BE IDENTIFIED AT THE TIME OF SUBMITTAL TO CITY COUNCIL FOR INTRODUCTION.

(O-2004-141.0608 Draft3)

ORDINANCE NUMBER O- _____ (New Series)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 1, DIVISION 15, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING A NEW SECTION 141.0608; AND BY RENUMBERING SECTIONS

_____ AND _____
TO _____ AND _____,
ALL RELATING TO
COMMERCIAL SERVICE USE CATEGORY – SEPARTELY
REGULATED USES.

WHEREAS,

WHEREAS,

WHEREAS,

NOW, THEREFORE,

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

Section 1. That Chapter 14, Article 1, Division 6 of the San Diego Municipal Code is amended by adding a new Section 141.0608 and renumbering Sections

_____ to _____ to read

as follows:

§141.0608 Eating and Drinking Establishments Selling Alcohol

Any establishment for which a Type 41 or 42, Beer and Wine License, or a Type 47, 48, or 75 General Liquor License has been obtained from, or for which

an application has been submitted to, the California Department of Beverage Control for permission to sell alcoholic beverages for on-site consumption shall be regulated as an eating and drinking establishment selling alcohol subject to this section.

Eating and drinking establishments selling alcohol are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the regulations in Section 141.0608(b).

Proposals for eating and drinking establishments selling alcohol that do not comply with the regulations in Section 141.0608(b) may be permitted with a Conditional Use Permit decided in accordance with Process Three subject to the regulations in Section 141.0608(c).

(a) Exemptions. The following eating and drinking establishments selling alcohol are exempt from the provisions of this section:

(1) Hotels, *motels*, or any other lodging establishments where the area devoted to the sale of alcoholic beverages for on-site consumption does not exceed 10 percent of the *gross floor area* of the entire *premises*;

(2) Alcoholic beverage establishments within the Gaslamp Quarter Planned District and the Centre City Planned District; and

(3) Eating and drinking establishments selling alcohol that were in existence on _____ [effective date of ordinance], if the establishment retains the same type of liquor license within a

license classification and is in continuous operation without substantial change in the mode or character of operation.

(A) For the purposes of Section 141.0608(a)(4), a break in "continuous operation" does not include the suspension of business due to extraordinary circumstances beyond the control of the licensee or a closure for more than 180 calendar days during the diligent pursuit of building repairs or remodeling of the *premises* undertaken under the authority of a valid Building Permit.

(B) For the purposes of Section 141.0608(a)(4), "substantial change in mode or character of operation" includes any of the following:

- (i) Closure, abandonment, discontinuance, or suspension of the outlet for more than 180 consecutive calendar days during which the *premises* are not continually maintained and secured;
- (ii) Alteration of the *premises* that would result in an increase of more than 10 percent of the existing *gross floor area* of all *structures* on the *premises*;

(iii) 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 calendar days for any reason; or

(iv) Conviction of the owner, operator, or the ABC licensee for violations of California Health and Safety Code Sections 11350, 11351, 11352, 11550 and 11364.7 when the conviction relates to the *premises* or the operation of the establishment.

(b) Limited Use Regulations. Eating and drinking establishments selling alcohol are permitted as a limited use subject to the following regulations.

(1) Eating and drinking establishments selling alcohol are not permitted in any of the following locations:

(A) Within a census tract, or within 600 feet of a census tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent;

(B) Within a census tract, or within 600 feet of a census tract, where the ratio of eating and drinking establishments selling alcohol exceeds the standards established by California Business and Professional Code section 23958.4;

(C) In an adopted Redevelopment Project Area;

- (D) Within 600 feet of a public or private accredited *school*, a *public park*, a playground or recreational area, a *church* except those established in accordance with Section 141.0404(a), a hospital, or a San Diego County welfare district office; and
- (E) Within 100 feet of a residentially zoned property.
- (2) For the purposes of Section 141.0608(b)(2), the separation distance shall be measured from *property line* to *property line* in accordance with Section 113.0225. A separation distance less than that required in Section 141.0608(b)(1) may be approved by the City Manager due to the existence of natural or built barriers such as topography, *freeways*, *flood* control channels, rivers, or similar divisive features if no direct access is available within the measurement area.
- (3) Pool or billiard tables, foosball or pinball games, arcade style video and electronic games, or coin-operated amusement devices are not permitted on the *premises* of an eating and drinking establishment selling alcohol.
- (4) Exterior public pay phones that permit incoming calls are not permitted on the *premises*, adjacent public sidewalks, or areas under the control of the owner or operator.

(5) The owner or operator shall provide illumination, at a minimum level of 0.4 footcandles per square foot, on the exterior of the eating and drinking establishments selling alcohol, including adjacent public sidewalks and areas under the control of the owner or operator. The illumination shall be in operation during all hours of darkness while the establishment is open for business so that persons standing on or near the *premises* at night are identifiable by law enforcement personnel. The required illumination shall be shielded and directed so that it does not shine on adjacent properties.

(6) The *sign* area pertaining to or referencing alcoholic sales or beverages shall not exceed 630 square inches.

(7) A maximum of 33 percent of the square footage of the windows and doors of the *premises* may bear advertising or *signs* of any sort, and all advertising and *signs* 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 establishment.

(8) The owner or operator of the eating and drinking establishment selling alcohol shall post a prominent, permanent *sign* or *signs* stating, "No loitering, consumption of alcoholic beverages, or open alcoholic beverage containers are allowed outside the *premises*, in

the parking area, or on the public sidewalks adjacent to the *premises.*"

- (9) The owner or operator shall list a business address and telephone number in the SBC/San Diego telephone directory or other similarly distributed directory.
- (10) The owner or operator shall maintain the *premises*, 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.
- (11) Off-street parking shall be provided in accordance with the requirements for eating and drinking establishments in Table 142.05E.

(c) Conditional Use Permit Regulations. Proposed eating and drinking establishments selling alcohol that do not comply with the regulations in Section 141.0608(b) may be permitted with a Conditional Use Permit decided in accordance with Process Three subject to the following regulations.

- (1) The San Diego Police Department shall provide the City Manager with a recommendation on the proposed use and location of the eating and drinking establishment selling alcohol. The City

Manager will provide the *applicant* with a copy the Police Department recommendation at least 7 calendar days before the date of the public hearing. The decision maker will review and consider the Police Department recommendation before making a decision on the application.

(2) The decision maker may request that the State of California Department of Alcoholic Beverage Control impose restrictions on any alcohol sales license to be issued or renewed by the state. The decision maker's request shall be based on an evaluation of conditions in the area of the proposed eating and drinking establishment selling alcohol, including the concentration of eating and drinking establishments selling alcohol, high crime rates, or any other conditions in the area that would be aggravated by the sale of alcoholic beverages.

(3) Off-street parking shall be provided in accordance with the requirements for eating and drinking establishments in Table 142.05E.

(4) Conditions addressing the following issues may be imposed by the decision maker:

(A) Entertainment uses or activities or amusement devices on the *premises*;

- (B) Hours of operation;
- (C) Security measures; and
- (D) Lighting, litter, graffiti or nuisance abatement, or any other special requirements for the *premises*.

(5) The owner or operator shall post a copy of the Conditional Use Permit conditions in the licensed *premises* in a place where they may be readily viewed by any member of the general public or any member of a government agency.

(6) The Conditional Use Permit shall include a date on which the permit will expire and become void. This date shall not be less than 10 years from the approval date of the Conditional Use Permit.

(7) An *applicant* may request that the expiration date be extended in accordance with the following provisions.

(A) An application for an extension shall be filed before the expiration of the approved Conditional Use Permit.

(B) An application for an extension shall be considered in accordance with Process Two if there is no record in the City of San Diego Police Department or other department or with any other governmental agency of any violations of

the State of California Department of Alcoholic Beverage Control 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 shall be considered in accordance with Process Three if there is a record of violations as described in Section 141.0608(c)(7)(B).
- (D) Prior violations of any conditions contained in an approved Conditional Use Permit shall constitute grounds for denying an application for an extension.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By _____
Deputy City Attorney

05/26/04
Or.Dept: [Dept]

DRAFT