

RESOLUTION NO. 4360

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF TUSTIN, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE CODE AMENDMENT 2017-003 BY ADOPTING ORDINANCE NO. 1493 RELATING TO ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS, AND APPROVING AMENDED PLANNING COMMISSION GUIDELINES FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

The Planning Commission does hereby resolve as follows:

- I. The Planning Commission finds and determines as follows:
 - A. The Zoning Code and existing Planned Community District regulations and Specific Plans were adopted to regulate land use to protect health safety and welfare.
 - B. The Alcoholic Beverage Sales Establishment Guidelines were adopted by the Planning Commission to provide policies, definitions, findings, and recommended conditions of approval to promote orderly development and mitigate impacts typically associated with alcoholic beverage sales establishments to protect the public health, safety, and welfare.
 - C. An amendment to the Alcoholic Beverage Sales Establishment Guidelines and the Tustin City Code is needed to provide guidance to promote new trending and evolving businesses, stimulate economic development, provide orderly development, and protect the public health, welfare and safety by defining on and off-site sales alcoholic beverage sales establishments, identifying desirable project characteristics, and setting forth recommended findings and conditions of approval for discretionary applications for alcoholic beverage sales establishments.
 - D. That the City Council and Planning Commission held a joint workshop on February 21, 2017, to discuss alcoholic beverage sales and consumption regulations and agreed they are overly restrictive.
 - E. That the Planning Commission held an alcoholic beverage sales workshop on September 12, 2017, and provided input for staff concerning proposed amendments to the Tustin City Code and the Alcoholic Beverage Sales Establishment Guidelines.
 - F. That the proposed code amendment would: require Conditional Use Permits for all new on- and off-site sales establishments (except for off-site alcoholic beverage sales establishments with an least 10,000 square feet of gross floor area with less than ten (10) percent of sales area of alcoholic beverages) and

provide a process for issuance and/or revocations of Conditional Use Permits for sales establishments.

- G. That an amendment to the Planning Commission Guidelines for Alcoholic Beverages Sales Establishment is necessary to help with the implementation of the Code Amendment and provide detailed standards conditions of approval.
- H. That on March 13, 2018, a public hearing was duly noticed, called, and held on Code Amendment 2017-003 and the amended Alcoholic Beverage sales Establishment Guidelines by the Planning Commission.
- I. That the proposed amendments to the Tustin City Code and the Alcoholic Beverage Sales Establishment Guidelines are consistent with the Tustin General Plan in that they comply with the following goals and policies:

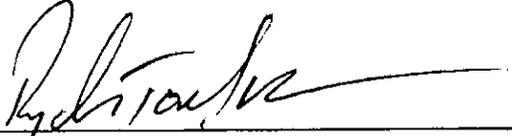
Land Use Element Policy 1.2 to provide for and encourage the development of neighborhood-serving commercial uses in the area of Tustin presently underserved by such uses.

Land Use Element Goal 4 to assure a safe, healthy and aesthetically pleasing community for residents and businesses.

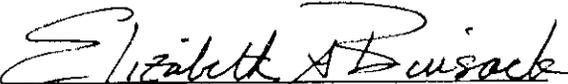
Land Use Element Goal 7 to promote expansion of the City's economic base and diversification of economic activity.

- J. That the proposed amendments to the Tustin City Code and the Alcoholic Beverage Sales Establishment Guidelines are exempt from environmental review pursuant to California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15060 (c) (2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.
- II. The Planning Commission hereby recommends that the City Council adopt Ordinance No. 1493, amending Tustin City Code Sections 9232a1.(a), 9241a1., 9252j3.(c), 9271dd, and 9299(3)(g) relating to alcoholic beverage sales establishment regulations, attached hereto as Exhibit A.
 - III. The Planning Commission hereby adopts the amended Alcoholic Beverage Sales Establishment Guidelines attached hereto as Exhibit B, which shall become effective only upon subsequent approval of Code Amendment No. 2017-003 (Ordinance No. 1493) by the City Council.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Tustin held on the 13th day of March, 2018.



RYDER TODD SMITH
Chairperson

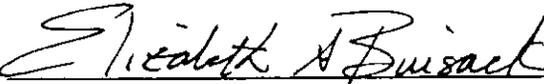


ELIZABETH A. BINSACK
Planning Commission Secretary

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF TUSTIN)

I, Elizabeth A. Binsack, the undersigned, hereby certify that I am the Planning Commission Secretary of the City of Tustin, California; that Resolution No. 4360 was passed and adopted at a regular meeting of the Tustin Planning Commission, held on the 13th day of March, 2018.

PLANNING COMMISSIONER AYES: Kozak, Lumbard, Mason, Smith, Thompson (5)
PLANNING COMMISSIONER NOES: _____
PLANNING COMMISSIONER ABSTAINED: _____
PLANNING COMMISSIONER ABSENT: _____



ELIZABETH A. BINSACK
Planning Commission Secretary

**Planning Commission Alcoholic Beverage Sales Establishment Guidelines
Adopted by Resolution No. 4360**

Purpose and Intent:

The purpose of these guidelines is to promote and protect the public health, safety, and general welfare, and preserve and enhance the quality of the City relating to establishments selling alcoholic beverages for on- and off- site consumption. To fulfill this purpose, it is the intent of these guidelines to:

- Establish reasonable guidelines to promote orderly development;
- Identify operational guidelines to minimize the impacts on the adjacent properties and neighborhood; and,
- Ensure implementation of certain regulations necessary to protect public safety.

Policy:

The guidelines together with the Tustin City Code shall be considered by the Community Development Department, Zoning Administrator, Planning Commission, and/or City Council, as applicable, in conjunction with applications for Conditional Use Permits. The guidelines define on- and off-site alcoholic beverage sales establishments, identify desirable project characteristics, and set forth recommended findings and conditions of approval. The provisions contained herein shall be considered guidelines. The Zoning Administrator, Planning Commission, and/or City Council may modify, add, or waive any part of these Guidelines when the required findings can be made and that the modification, addition and/or deletion would still further the purpose and intent of the Guidelines.

Using the Guidelines

Organization

The guidelines are organized into four sections:

- I. Definitions
- II. Permit Process
- III. Findings
- IV. Standard Conditions of Approval

I. Definitions

“On-Site Sales Establishment” shall mean an on-site sales establishment that provides for the sale of alcoholic beverages for consumption on the premises.

“Off-Site Sales Establishment” shall mean the sale of alcoholic beverages for consumption off the premises.

Off-site sales in establishments greater than 10,000 square feet where the alcohol beverage sales area occupies less than ten (10) percent of the gross floor area do not require approval of Conditional Use Permits and are not subject to these Guidelines.

II. Permit Process

An applicant requesting approval for on- or off-site sale of alcoholic beverages shall first obtain approval of a Conditional Use Permit issued by the Zoning Administrator. Action by the Zoning Administrator is appealable to the Planning Commission in accordance with Tustin City Code Section 9294.

The sale of alcoholic beverages for on- or off-site consumption at new or existing establishments, as regulated by the Zoning Code, Planned Community District Regulations, or Specific Plans, shall comply with these guidelines.

III. Required Findings

In considering applications for alcoholic beverage sales establishments, the Zoning Administrator shall find the following:

1. That the establishment, maintenance and operation of selling alcoholic beverages for on- or off-site consumption or ancillary uses related thereto will not be detrimental to the health, safety, comfort, or general welfare of the persons residing or working in the neighborhood, nor be injurious or detrimental to the property and improvements in the neighborhood of the subject property, or to the general welfare of the City of Tustin, as evidenced by specified findings.
2. That the operational characteristics and features of the facility such as the hours of operation, outdoor dining, live entertainment, coin operated video games, and billiard/pool tables, on-site security are appropriate for the location and type of use proposed in relation to surrounding residential areas, sensitive uses such as places of worship, parks, schools, hospitals, clinics, convalescent homes, and other similar uses selling or serving alcoholic beverages.
3. That the development or modification of an establishment selling alcoholic beverages shall be consistent with the General Plan and Zoning Code.

4. That the proposed establishment is not located within an over-concentrated area, a high crime area, and/or an area that is not conducive to the sales of alcoholic beverages as determined by the City of Tustin. An area that is not conducive to the sales of alcoholic beverages may include but is not limited to an area that caters to schools, places of worships, preschools, parks, etc.

IV. Standard Conditions of Approval

The following standard conditions of approval shall be incorporated as operating conditions for the proposed Alcoholic Sales Establishments:

1. All On- and Off-site Alcoholic Beverage Sale Establishments

- a. The applicant shall sign and return an "Agreement to Conditions Imposed" form provided by the Community Development Department which states that the property owner, applicant, operator, and/or tenant agrees to comply with all conditions imposed by the City of Tustin. Failure to comply with conditions of approval, or if the establishment creates undue burden to City resources, or if the Conditional Use Permit is abandoned for a twelve (12) month period, these circumstances shall be grounds for revocation of the Conditional Use Permit.

Any transfer of ownership of the establishment and/or operator shall require the new owner and/or operator to sign and return an "Agreement to Conditions Imposed" form provided by the Community Development. Failure to do so would be a basis for revocation proceeding.

- b. The Conditional Use Permit may be reviewed on an annual basis, or more often if necessary, by the Community Development Director. The Community Development Director shall review the use to ascertain compliance with conditions of approval. If the use is not operated in accordance with Conditional Use Permit, or is found to be a nuisance or negative impacts are affecting the surrounding tenants or neighborhood, the Community Development Director shall impose additional conditions to eliminate the nuisance or negative impacts, or may initiate proceedings to revoke the Conditional Use Permit.
- c. The applicant shall be responsible for costs associated with any necessary code enforcement action, including attorney's fees, subject to the applicable notice, hearing, and appeal process as established by the City Council by ordinance.

- d. The applicant shall provide the first inspection fee as determined by the Community Development. The Community Development Director shall have the authority to require additional fee if determined to be necessary to protect public health, welfare, peace and comfort.
- e. Approved uses shall comply with all applicable State, County and the Tustin City Code. Any violations of the regulations of Department of Alcoholic Beverage Control as they pertain to the subject location, or of the City of Tustin, as they relate to the sale of alcoholic beverages, may result in the revocation of the subject Conditional Use Permit.
- f. Applicants shall obtain the appropriate license from the State Department of Alcoholic Beverage Control for the type of alcoholic sales authorized for the site. A copy shall be provided to the City prior to operating the alcoholic sales.
- g. All managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The California Department of Alcoholic Beverage Control must approve said training program. Records of each employee's successful completion of the certified training program required by this section shall be maintained on the premises of the alcoholic beverage sales establishment and shall be presented upon request by a representative of the City of Tustin.
- h. Business operations shall be in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
- i. If requested by the Tustin Police Department, businesses shall install and maintain a video surveillance system to monitor all doors, public area of the premises and parking areas and shall make the video available to the Police Department. Electronic copies of videos shall be made available to the Police Department within 48 hours of request. Digital recording shall be made available for viewing on-scene upon request by a Police Officer. The business shall retain video surveillance for one (1) month. All video surveillance cameras must record in color, with digital recording to DVR and able to record in low-light.
- j. No sexually oriented business shall be conducted on the premises without approval by the City in accordance with the Tustin City Code.
- k. Any graffiti painted or marked upon the premises or any adjacent area under control of the property owner or the business shall be removed or painted within twenty-four (24) hours of being applied.

- i. All litter shall be removed from the exterior areas around the premises including adjacent to public sidewalk area and parking areas, no less frequently than once each day that the business is open.
- m. All signs shall comply with the Tustin Sign Code and the following:
 - i. There shall be no exterior advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. No interior displays of alcoholic beverages or signs which are clearly visible to the exterior.
 - ii. Permissible window displays must be kept to a minimum for maximum visibility and shall not exceed twenty-five (25) per cent of window coverage.
 - iii. Except for restaurants, the applicant shall post "NO LOITERING" sign prohibiting loitering on the exterior of the premises.
 - iv. Signs shall be posted in a conspicuous space at all entrances/exits of the premises which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT."

2. **On-site alcoholic beverage sales establishments**

- a. Authorization for on-site sales of alcohol in conjunction with the proposed use is contingent upon the use remaining at the subject site. At such time the use is discontinued or no longer shall the primary use of the site, the use permit shall be deemed null and void.
- b. Businesses may operate until 2:00 a.m. unless otherwise restricted by the Zoning Administrator. If there is a marked or noticeable increase in the number of police-related incidents on or near the premises, as such increase may be determined by the Chief of Police, the applicant may be required to provide state-licensed, uniformed security guards at a number determined by the chief of police.
- c. The applicant or an employee of the licensee must be present to monitor all areas of the establishment, including outdoor patios, during all times that alcoholic beverages are being served or consumed.
- d. Employees and contract security personnel shall not consume any alcoholic beverages during their work shift, except for product sampling for purposes of employee education about new products. Under no circumstances may contract security personnel consume alcoholic beverages during their work shift.

- e. The applicant shall at all times utilize an age verification means or device for all purchases of alcoholic beverages. Such verification of age is not intended to discriminate against patrons based on race, ethnicity or legal status, but only to comply with state law restricting the sale of alcohol to those twenty-one (21) and older.
- f. In the event that there is a queuing line, the business owner, or his designee, shall be responsible for monitoring the queuing lines at all times. No food or beverages shall be consumed while in queuing lines. The outdoor queuing line shall not block public walkways or obstruct the entry or exit doors of adjacent businesses.
- g. All alcohol shall be consumed on-site with the exception of the provisions stated in the Business and Profession Code Section 23396.5 and 23401.
- h. Food must be served whenever the privileges of the on-sale license are being exercised. Food service shall be available until one (1) hour before closing.
- i. There shall be no fixed bar or lounge area upon the premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons. A fixed bar or lounge may be permitted if it function as food and beverage service bar or lounge area.
- j. There shall be no requirement for patrons to purchase a minimum number of alcoholic drinks.
- k. Games or contest requiring or involving consumption of alcoholic beverages shall be prohibited.
- l. There shall be no special events sponsored by or involving an outside promoter or any other person other than the applicant and/or property owner. The building may not be sublet to a separate business or promoter or person other than the applicant and/or property owner.
- m. Any pool tables, amusement machines or video games maintained on the premises at any time must be reviewed and approved in a security plan submitted to the Community Development Department and the Police Department.
- n. The owner or manager of the licensed premises shall maintain on the premises a written security policy and procedures manual, which has been approved by the police department, addressing at a minimum the following items: Identify individuals who are responsible for the premises. The list shall include contact information such as name, address, phone number, etc. and the list shall current and accurate.

- i. Procedures for handling obviously intoxicated persons.
- ii. The method for establishing a reasonable ratio of employees to patrons, based upon activity level, in order to ensure adequate staffing levels to monitor beverage sales and patron behavior.
- iii. Procedures for handling patrons involved in fighting, arguing or loitering about the building, and/or in the immediate adjacent area that is owned, leased, rented or used under agreement by the licensee(s).
- iv. Procedures for verifying the age of patrons for purposes of alcohol sales.
- v. Procedures for ensuring that servers monitor patrons to ensure that their drinking limit/potential intoxication is not exceeded. This procedure should include a description of the procedure the server would use to warn, or refuse to serve, the patron.
- vi. Procedures for calling the police regarding observed or reported criminal activity.
- vii. Procedures for management of queuing lines.
- viii. The location and description of any video games proposed to be on the premises.
- o. Live entertainment shall be subject to the issuance of a live entertainment permit pursuant to Tustin City Code Chapter 2 Part 3, and shall comply with all of the standards contained therein.
- p. For establishments with live entertainment permit per Tustin City Code or amplified music, all exterior doors and windows will be closed during the hours of such entertainment or music, except to allow ingress or egress of patrons, or in the case of emergencies. All exterior doors and windows shall be an adequate acoustic barrier, and shall not consist solely of a screen or ventilated security door.
- q. There shall be no window coverings or advertisements that reduce the visibility inside of the business.

3. Off-site alcoholic beverage sale establishments

- a. No sales of alcoholic beverages shall take place after 2:00 a.m. or as limited by the Conditional Use Permit and/or the Department of Alcoholic Beverages Control.
- b. No person under the age of twenty-one (21) shall sell or deliver alcoholic beverages.
- c. Refrigerated single serving beverage containers shall be located in enclosed refrigeration unit no less than ten (10) feet from the point of sale and a minimum of five (5) feet from the entrance to the premises.
- d. No display, sale or distribution of alcoholic beverages shall be made from an ice tub, barrel or similar container.
- e. Alcoholic beverages in containers of less than sixteen (16) ounces cannot be sold by single containers, but must be sold in pre-packaged multi-unit quantities.
- f. There shall be no coin-operated games maintained on the premises at any time.
- g. Cash register must be visible from the street at all times and shall not be obstructed at any time by temporary or permanent signage.
- h. A timed-access cash controller or drop safe must be installed.
- i. A silent armed robbery alarm must be installed and operable at all times.
- j. The owner or manager of the licensed premises shall maintain on the premises a written security policy and procedures manual, that has been approved by the police department, addressing at a minimum the following items:
 - i. Handling obviously intoxicated persons.
 - ii. Establishing a reasonable ratio of employees to patrons, based upon activity level, in order to monitor beverage sales and patron behavior.
 - iii. Handling patrons involved in fighting, arguing or loitering about the building and in the immediate adjacent area that is owned, leased, rented or used under agreement by the licensee(s).
 - iv. Verifying age/checking identification of patrons.

- v. Calling the police regarding observed or reported criminal activity.
- k. If there is a marked or noticeable increase in the number of police-related incidents on or near the premises, as such increase may be determined by the Chief of Police, the applicant may be required to provide state-licensed, uniformed security guards at a number determined by the chief of police.