ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, AMENDING FULLERTON MUNICIPAL CODE CHAPTERS 15.04, 15.30, 15.31, 15.71 TO UPDATE DEVELOPMENT AND OPERATIONAL STANDARDS, PROCESSES AND ENFORCEMENT TOOLS FOR BUSINESSES SELLING ALCOHOL FOR ON-SITE CONSUMPTION AND FULLERTON MUNICIPAL CODE CHAPTER 3.08 TO UPDATE DEFINITIONS, SUBMITTAL REQUIREMENTS, REVIEW PROCESS AND ENFORMCENT PROCEDURES FOR BUSINESSES OFFERING ENTERTAINMENT

WHEREAS pursuant to FMC Section 15.72.020B the City Council of the City of Fullerton adopted a Resolution of Intention on June 5, 2018 authorizing a Zoning Ordinance amendment to revise various chapters of Title 15 of the Fullerton Municipal Code; and

WHEREAS the Planning Commission of the City of Fullerton has held a duly noticed public hearing, as required by law, to consider amendments to Title 15 of the Fullerton Municipal Code to update development and operational standards, processes and enforcement for businesses selling alcohol for on-site consumption; and

WHEREAS the proposed amendments will simplify development and operational standards so they are more easily understood by property owners, business operators, and the general public; and, more easily enforceable by City staff; and

WHEREAS Live Entertainment Permits are reviewed and issued by the Fullerton Police Department and are intended to regulate the entertainment activities occurring within bars and restaurants citywide; and

WHEREAS creating consistency between how land-use entitlements for bars and restaurants are regulated as well as the entertainment activates which occur therein will ensure that businesses operate in a safe manner to protect the health, safety and general welfare of patrons and community members; and

WHEREAS the City Council desires to amend Chapters 15.04, 15.30, 15.31, 15.71 and 3.08 of the Fullerton Municipal Code to add and amend definitions, update submittal requirements and review processes for applications, streamline operational standards and enhance enforcement procedures for establishments that serve alcohol for on-site consumption and for establishments which wish to offer entertainment citywide.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 15.04.040 is hereby amended to add or amend the following definitions, in alphabetical order:

AMBIENT MUSIC, shall mean low-volume, background music, whether amplified or not amplified, not audible to a reasonably hearing person at twenty-five (25) feet from any portion of the exterior of the building (including outdoor patios/dining areas), and which is intended to provide ambience and not to entertain.

BAR (also TAVERN, COCKTAIL LOUNGE), shall mean a commercial establishment, the primary purpose of which is the sale of alcoholic beverages for consumption on the premises, with or without food service, from which minors are excluded by law and which requires a "public premises"-type license issued by the California Department of Alcoholic Beverage Control.

ENTERTAINMENT, shall mean any of the following: 1) dancing (by customers or by performers), 2) live musical performances (instrumental or vocal) when carried on by three or more persons, 3) music provided by a disc jockey, whether indoors or outdoors other than Ambient Music, or karaoke 4) any professional comedian or comic who tells jokes, acts out comical situations, or engages in repartee, or 5) any other similar entertainment activity involving amplified or reproduced music.

ENTERTAINMENT (MINOR ACOUSTICAL), shall mean musical performers consisting of two (2) or less cafe musicians, as defined in California Government Code Section 37101.5, playing acoustical instruments without the use of amplification systems. Such performers may be strolling or stationary within the establishment.

NIGHTCLUB, shall mean any bar, cocktail lounge, karaoke bar or similar establishment with Entertainment and alcoholic beverage sales operating under a Type 42 or Type 48 Department of Alcoholic Beverage Control license (On-sale General—Public Premises) or similar license.

RECEPTION HALL (also BANQUET FACILITY), shall mean an establishment that has been designed to accommodate an assembly of people for an organized event such as a reception, banquet, dance, concert, conference, seminar or other similar type activity.

RESTAURANT, shall mean a commercial establishment, the primary purpose of which is the sale and service of meals on-site to guests, which has suitable kitchen facilities containing the necessary appliances required for cooking unpackaged foods, and which complies with all of the applicable requirements of the Orange County Health Department related to retail food facilities.

RESTAURANT WITH ENTERTAINMENT, shall mean a Restaurant (as defined in this chapter), with or without on-premise sale and consumption of alcoholic beverages, that offers Entertainment (as defined in this chapter) as a regular and consistent part of its operation and is typically open past traditional dinner hours. Typical uses include Restaurants that convert to a bar or nightclub-style operation during a portion of their operating hours.

RESTAURANT WITH ON-SITE ALCOHOL SALES, shall mean a Restaurant (as defined in this chapter) where alcoholic beverages are sold to and consumed by patrons on the premises, in conjunction with the serving and consumption of a meal. Said establishment shall have and maintain all requisite permits and approvals required by the California Department of Alcoholic Beverage Control, and shall meet the requirements of a bona fide eating place as defined by Section 23038 of the California Business and Professions Code, and any successor provision thereto.

SECTION 2. Chapter 15.30 is hereby amended as follows:

15.30.030.1. Permitted Uses in the O-P Zoning District.

B. The following uses are permitted in the O-P zoning district subject to the approval of a conditional use permit (CUP) pursuant to FMC 15.70:

13. Restaurant, with or without on-site alcohol sales or Entertainment.

15.30.030.2. Permitted Uses in the G-C Zoning District.

A. The following uses are permitted in the G-C zoning district:

19. Restaurant, without On-Site Alcohol Sales or Entertainment.

B. The following uses are permitted in the G-C zoning district subject to the approval of a conditional use permit (CUP) pursuant to FMC 15.70:

7. Bar, including Tavern and Cocktail Lounge subject to FMC 15.31.

26. Reception hall, banquet facility, dance hall or related use subject to FMC 15.31

31. Restaurant with On-Site Alcohol Sales and Entertainment subject to FMC 15.31

19. Karaoke bar or Nightclub subject to FMC 15.31

C. The following uses are permitted in the G-C Zone subject to the approval of an Administrative Restaurant Use Permit:

1. Restaurant with On-Site Alcohol Sales.

2. Restaurant with Entertainment, with no On-Site Alcohol Sales, subject to the approval of an Entertainment Permit.

3. Micro-Brewery, with tasting room(s), or tap room(s) not exceeding 1,000 square feet of indoor area.

15.30.030.3 – Permitted Uses in the C-3 Zoning District.

A. The following Uses are permitted in the C-3 Zoning District:

22. Restaurant, without On-Site Alcohol Sales or Entertainment.

B. The following Uses are permitted in the C-3 Zone subject to the approval of a Conditional Use Permit:

6. Bar including Tavern and Cocktail Lounge subject to FMC 15.31

14. Karaoke bar or Nightclub subject to FMC 15.31

22. Restaurant with Entertainment and On-Site Alcohol Sales subject to FMC 15.31

D. The following uses are permitted in the C-3 Zone subject to the approval of an Administrative Restaurant Use Permit:

1. Restaurant with On-Site Alcohol Sales.
2. Restaurant with Entertainment, with no On-Site Alcohol Sales, subject to the approval of an Entertainment Permit.
3. Micro-Brewery, with tasting room(s), or tap room(s) not to exceed a total of 1,000 square feet of indoor area.

Chapter 15.30.030.4 shall be amended as follows:

A. The following uses are permitted in the C-M zoning district:

3. Micro-Brewery, with tasting room(s), or tap room(s) not to exceed a total of 1,000 square feet of indoor area subject to the approval of an Administrative Restaurant Use Permit.

23. Restaurant, with On-Site Alcohol Sales subject to FMC 15.31 and FMC 15.71.

SECTION 3. Chapter 15.30.040.H shall be repealed in its entirety and replaced with Chapter 15.31.

CHAPTER 15.31
REGULATIONS FOR BUSINESSES SELLING ALCOHOL FOR ON-SITE CONSUMPTION

Sections:

15.31.010. Intent and purpose

15.31.020. Applicability

15.31.030. Operational Standards

15.31.040. Suspension, Modification, or Revocation

15.31.050. Nuisance Businesses

15.31.060. Discontinuance

15.31.070 Enforcement

15.31.010. Intent and Purpose

A. The intent of this chapter is to ensure that businesses offering on-site alcohol sales as part of their normal business practices are compatible with surrounding land uses and businesses, and are consistent with the goals and objectives of the General Plan.

B. The purpose of this chapter is to establish standards to facilitate the orderly operation of businesses offering on-site alcohol sales as a normal part of their business practices.

15.31.020. Applicability

Businesses selling alcohol for on-site consumption (On-Sale Establishment) in any zone, including Specific Plan areas, are subject to the regulations set forth in this Chapter in addition to any other applicable requirements of this code.

15.31.030. Operational Standards

A. The following operational standards are required for all Restaurants with On-Site Alcohol Sales. The Planning Commission or Community Development Director may approve modifications to the operational standards contained in this section as part of the review of the applicable use permit, if strict compliance with the standards is not necessary to achieve the intent of the standard with respect to a particular business or premises. Specific conditions of approval may be required based on the location and operational characteristics of the business.

1. Hours of Operation. The permitted hours of operation shall be established by the applicable Administrative Restaurant Use Permit or Conditional Use Permit for the subject establishment.

    a. Minimum Hours of Operation for Restaurants with Entertainment. Restaurants with Entertainment shall be open and offer a full dining menu during normal dinner hours (typically 5:00 p.m. to 9:00 p.m.) a minimum of five days per week. Food shall be made available to patrons at all times the business is open, except the last hour before closing. Restaurants with Entertainment are strongly encouraged, but not required, to be open during regular lunch hours.

2. Security/Operational Plan. Any business providing Entertainment at any time, or On-Site Alcohol Sales after 10:00 p.m., shall be required to provide a written Security/Operational Plan in a form and manner as prescribed by the Police Department. The contents of the plan shall include, but are not limited to:

    a. The number and locations of any security personnel.

    b. The use and location of video surveillance for the interior and exterior of the establishment as applicable.

    c. Lighting plans for the interior and/or exterior. All indoor and outdoor areas shall have adequate lighting to make easily discernible all activities for security and safety purposes. Outdoor lighting shall be designed to minimize light trespass on to streets and adjoining properties, and shall include shielding and fixture placement to restrict unintended light glare.

    d. Description of security protocols and practices to address incidents within the establishment, exterior patios and queueing areas.

    e. When applicable, a written description of how the establishment will provide visibility into the premises for security and police personnel.

    The Police Department may alter the number of security personnel required at any time, with reasonable written notice, based upon observed conditions at the establishment. Modifications to a Security Plan may include specific days, times, or occasions necessitating additional security, such as temporary uses, special events or holidays.

3. Outdoor Music. Ambient Music, as that term is defined in this Title, is permitted to be played through house speakers at a volume wherein normal conversation is not impeded, within the outdoor dining or patio until 12:00 a.m. Any music that is played outdoor at a volume louder than Ambient Music, whether live or pre-recorded, is considered Entertainment (Outdoor).

4. Promoters. Neither the business, nor anyone on its behalf, shall share any profits, or pay any percentage or commission to a promoter, or otherwise receive compensation for use of the facilities.

5. Cover Charge. No admission fee, cover charge, or similar fees may be imposed upon patrons as a condition of entry to the premises prior to 10:00 p.m. After 10:00 p.m. a cover charge may be assessed at the discretion of the business.

6. Noise. Noise generated from the establishment shall not exceed the levels specified in Chapter 15.90.

7. Queuing. Outside queuing of patrons shall be located so as not to obstruct the public right-of-way, interfere with any outside eating areas, or impede access to adjacent businesses. Adequate lighting and security provisions shall be required for all queuing areas and described in the Security/Operational Plan.

8. Responsible Beverage Service/Sales Training Requirements. All owners, managers and employees serving and/or selling alcoholic beverages in an establishment shall complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages. Records regarding the successful completion of the training program shall be maintained on the premises and presented for review upon request by City staff.

9. Posting of Responsible Beverage Sales policies. Operators shall be required to post the businesses alcohol sales policies in a conspicuous location within the establishment. These policies should include:

    a. Requirement to provide identification for every customer under the age of 30

    b. Notice to patrons regarding the use of video surveillance

    c. Posting of signage in a conspicuous location which states “It is illegal to serve or sell alcohol to a person who is obviously intoxicated [B&P Code 25602]”

10. Graffiti. The exterior of the business, including signs and accessory structures, shall be maintained free of graffiti at all times. Graffiti shall be removed within twenty-four (24) hours.

11. Trash/debris removal. The business owner or operator shall provide for daily/nightly removal of trash, litter and debris (including vomit, urine and excrement) from the premises and on all abutting sidewalks and parking lots within twenty-five (25) feet of the exterior of the building. Removal and cleaning of this area shall be completed as part of the closing of the establishment.

15.31.040. Suspension, Modification, or Revocation

Any business with a use permit for on-site alcohol sales, may be subject to suspension, modification, or revocation if the Planning Commission or City Council, as applicable, determines that the business has been operated so as to create an adverse impact on the health, safety, or welfare of surrounding properties. Police services, Maintenance Services Department, or in violation of the law or any permit which it may have been issued.

A. Suspension, Modification or Revocation Procedures. The Planning Commission or City Council, as the case may be, may suspend, modify, or revoke a CUP or an ARUP following the procedures set forth in Chapter 15.70 or 15.71, as the case may be.

B. The following occurrences shall trigger the scheduling of a public hearing with the Planning Commission to suspend, modify or revoke a Conditional Use Permit or ARUP:

1. Issuance of three (3) criminal or life/safety related notices of violation or citations within a six (6) month period from either the Fire Marshal, the Building Official, or the Police Department.

2. The imposition of any disciplinary action or finding of violation by the Department of Alcoholic Beverage Control.

3. Any critical incident occurring on or in the premises, or in connection with the operations on the premises, as determined by the Community Development Director, in consultation with the Police Department.

C. The following occurrences may trigger the scheduling of a public hearing with the Planning Commission to suspend, modify or revoke a Conditional Use Permit or ARUP:

1. Issuance of three administrative (3) notices of violation or administrative citations within a six (6) month period from the Community Preservation officers.

D. The City specifically does not want to discourage business owners or others from contacting the police or other emergency services under any necessary circumstances. Therefore, the number of calls for service to the Police Department shall not be used as the basis for suspension and/or revocation of a CUP or ARUP.

15.31.050 Nuisance Businesses.

A. Any business which sells alcoholic beverages for on-site consumption in the City that does not have a CUP or an ARUP or was opened without any city use permits required at the time of opening, will be considered a nuisance business if the Planning Commission or City Council, as the case may be, determines that the business has been operated in such a fashion as to cause an adverse impact on the neighboring businesses and/or residences, the City's Police Department, the Maintenance Services Department, or in violation of the law or any permit which it may have been issued.

B. The criteria for determining whether a business is a nuisance shall be the same types of occurrences specified in Section 15.31.040.B.

C. The Planning Commission or City Council shall conduct a public hearing in order to determine whether there is sufficient evidence to declare the business a nuisance. If a business is declared a nuisance business by the Planning Commission, that decision may be appealed, in writing, to the City Council within ten (10) business days of the Planning Commission's action.

D. If a business is declared a nuisance business by the Planning Commission and no timely appeal is filed, the decision becomes final ten (10) business days after issuance of the decision.

E. If an appeal of a Planning Commission determination is filed within the specified timeframe, the City Council shall conduct a new public hearing on the matter and issue a decision as soon as possible, but no later than sixty (60) days after the conclusion of its deliberations. If

the City Council upholds the determination that the business is a nuisance business, that decision becomes final upon issuance of the City Council's decision.

F. If a business operating without a CUP or ARUP is declared a nuisance business, the Planning Commission or City Council, as the case may be, may require the business to apply for a CUP or ARUP, as may be appropriate based on the operational characteristics of the business, subject to the imposition of conditions which will, in the judgment of the Commission or Council, mitigate or address the type(s) of nuisance activity which has been found to occur at the business.

15.31.060. Discontinuance

Any use permit for a business with On-Site Alcohol Sales shall be automatically deemed revoked if the use is discontinued for three-hundred and sixty-five (365) consecutive days or if the ABC license for the establishment has been revoked or transferred to a different location without a replacement license being approved within ninety (90) consecutive days.

15.31.070. Enforcement

Any person, whether as principal, agent, or employee, violating the terms of this Zoning Code may be prosecuted by any or all methods available to the City.

SECTION 4. Chapter 15.71 shall be repealed in its entirety and replaced.

CHAPTER 15.71
ADMINISTRATIVE RESTAURANT USE PERMIT

Sections:

15.71.010. Intent and Purpose.

15.71.020. Permit Required.

15.71.030. Application.

15.71.040 Standard Operating Conditions

15.71.050. Procedure for Review

15.71.060. Findings.

15.71.070. Appeals.

15.71.080. Revocation / Expiration.

15.71.090. Amendments to an Administrative Restaurant Use Permit (ARUP).

15.71.010. Intent and Purpose.

A. The intent of this chapter is to ensure that restaurants with on-site alcohol sales are compatible with surrounding land uses and businesses, and are consistent with the goals and objectives of the General Plan.

B. The purpose of this chapter is to establish standards and procedures to facilitate the orderly operation of restaurants with on-site alcohol sales as a normal part of their business practices.

15.71.020. Permit Required

Restaurants with on-site alcohol sales, as defined in Chapter 15.04 must obtain an Administrative Restaurant Use Permit (ARUP) prior to beginning such alcohol sales.

15.71.030. Application.

An application, in a form approved by the Community Development Director, for an Administrative Restaurant Use Permit shall be filed with the Community Development Department along with any applicable fees for this application type as established by the City Council.

15.71.040. Standard Operating Conditions

Restaurants requesting an Administrative Restaurant Use Permit shall be subject to the Operational standards contained within Chapter 15.31 for establishments wishing to sell alcoholic beverages for on-site consumption.

15.71.050. Procedure for Review

An ARUP or an amendment to an ARUP shall be reviewed and approved by the Zoning Administrator, or designee according to the following procedure:

A. Administrative Restaurant Use Permits (ARUP) Public Hearing:

1. At least ten calendar days prior to the public hearing, notice of the hearing shall be mailed to the applicant, owner and situs of property within three hundred (300) feet of the boundaries of the site, as shown on the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses;

2. At least ten calendar days prior to the public hearing, a notice of the hearing shall be posted at the project site in clear public view;

B. The application to the Zoning Administrator may be approved with conditions or denied. Approvals shall be subject to the operational standards contained within Chapter 15.31, and those conditions the Zoning Administrator, or designee finds necessary to ensure compatibility with the surrounding area and the General Plan.

C. Decisions of the Zoning Administrator or his/her designee shall be final, unless appealed.

15.71.060. Findings

In order to grant an Administrative Restaurant Use Permit, the Zoning Administrator must make the following findings:

A. That the proposed use is permitted in the zone and complies with all applicable zoning standards; and

B. That the proposed use is consistent with the goals and policies of the general plan of the city or any specific plan applicable to the area of the proposed use; and

C. That the proposed use as conditioned will not be incompatible with the surrounding area or those persons residing or working in the vicinity

15.71.070. Appeals.

Decisions of the Zoning Administrator or his/her designee may be appealed to the Planning Commission, and decisions of the Planning Commission may be appealed to the City Council. Procedures for appeals shall be as prescribed by Section 15.70.060 of Chapter 15.70.

15.71.080. Revocation / Expiration.

A. Revocation shall follow the process and procedures specified in Chapter 15.70.

B. Revocation of an Administrative Restaurant Use Permit shall be based on one or more of the following findings:

1. That the permit was issued on the basis of erroneous or misleading information or misrepresentation;

2. That the terms or conditions of approval of the permit have been violated or that other laws or regulations have been violated;

3. The establishment for which the permit was issued is being operated in an illegal or disorderly manner;

4. The business or establishment for which the permit was issued has had or is having an adverse impact on the health, safety or welfare of the neighborhood or the general public;

5. The business or establishment fails to comply with the rules, regulations and orders of the California Department of Alcoholic Beverage Control (ABC) or the terms and conditions of its ABC permit.

C. Expiration. In the event that a the use requiring an ARUP is not used, has expired, or is found to be voluntarily abandoned for a period of three-hundred and sixty-five (365) consecutive days, the ARUP shall automatically become expired and any new use at this location shall be required to apply for a new ARUP in accordance with the provisions of this Title.

15.71.090. Amendments to an Administrative Restaurant Use Permit (ARUP)

A. An amendment to an Administrative Restaurant Use Permit shall be required for any of the changes listed in this section.

B. Major Changes. A Zoning Administrator shall be required for any major amendment to an Administrative Restaurant Use Permit pursuant to the procedure established in this Chapter.

1. Major changes include any of the following:

a. Any increase in the hours of operation past 12:00 a.m.;

b. Any change in the type of alcohol license (ABC License) required by the State of California;

c. Major changes to the floor plan or seating which results in a substantial increase in the seating or occupancy, as determined by the Community Development Director;

d. Any material changes in the conditions of approval except in the case where the new or amended condition(s) is/are equivalent to or more restrictive than the prior approved condition(s).

C. Minor Changes. The Community Development Director may administratively approve minor amendments to an Administrative Restaurant Use Permit.

1. Minor changes include any of the following:

a. Any change which does not constitute, either individually or cumulatively, a major change in operational characteristics.

b. Any increase in the hours of operation before 12:00 a.m.;

c. The introduction of Entertainment (Minor Acoustical) as that term is defined in this Title;

d. The addition of any pool tables or amusement devices;

e. Minor changes to floor and seating plans which do not result in a substantial increase in seating occupancy, as determined by the Community Development Director;

f. The introduction of valet parking.

SECTION 5. Chapter 3.08 shall be repealed in its entirety and replaced.

Chapter 3.08
ENTERTAINMENT

3.08.010 Intent and Purpose.

3.08.020 Definitions.

3.08.030 Permit required.

3.08.040 Exempt Activities

3.08.050 Entertainment Permit Application Fees.

3.08.060 Entertainment Permit Application Contents.

3.08.070 Entertainment Permit Application Review and Investigation.

3.08.080 Entertainment Permit – Denial.

3.08.090 Appeal Process.

3.08.100 Appeal Hearing.

3.08.110 Entertainment Permit Validity and Renewal.

3.08.120 Existing Entertainment Permit - Validity.

3.08.130 Change of Ownership – Non-Transferable Permits.

3.08.140 Baseline Operational Requirements for Entertainment Establishments.

3.08.150 Operational Restriction Procedures.

3.08.160 Entertainment Permit Suspension or Revocation.

3.08.170 Excessive Police Services Required.

3.08.180 Violation - Penalty.

3.08.190 Severability.

3.08.010 Intent and Purpose.

The intent of this chapter is to ensure that businesses offering Entertainment as part of their normal business practices are compatible with surrounding land uses and businesses and are consistent with the goals and objectives of the General Plan.

The purpose of this chapter is to establish standards and procedures to facilitate the orderly operation of businesses offering Entertainment as a normal part of their business practices.

3.08.020 Definitions.

Whenever used in this chapter, the following words, terms and phrases shall have the meanings as indicated below.

A. **AMATEUR,** shall mean any person who has never been an entertainer for compensation.

B. **AMBIENT MUSIC,** shall mean low-volume, background music, whether amplified or not amplified, not audible to a reasonably hearing person at (25) twenty-five feet from any portion of the exterior of the building (including outdoor patios/dining areas), and which is intended to provide ambience and not to entertain.

C. **AUDIENCE** shall mean one or more persons, present as listeners or viewers, but not as entertainers, during any entertainment.

D. **AUDITION,** shall mean any test of the quality of entertainment not in the presence of a public audience and without compensation.

E. **ENTERTAINER,** shall mean any person whose actions or presence provides entertainment, but does not mean a vocalist or a cafe musician, as defined in Section 37101.5 of the Government Code of California, while occupied exclusively in singing or performing music.

F. **ENTERTAINMENT,** shall mean any of the following: 1) dancing (by customers or by performers), 2) live musical performances (instrumental or vocal) when carried on by three or more persons, 3) music provided by a disc jockey, whether indoors or outdoors other than Ambient Music, or karaoke 4) any professional comedian or comic who tells jokes, acts out comical situations, or engages in repartee, or 5) any other similar entertainment activity involving amplified or reproduced music.

G. **ENTERTAINMENT (MINOR ACOUSTICAL),** shall mean two (2) or less cafe musicians, as defined in California Government Code Section 37101.5, playing acoustical instruments without the use of amplification systems. Such performers may be strolling or stationary within the establishment.

H. **ENTERTAINMENT (OUTDOOR)**, shall mean any ENTERTAINMENT, as defined in this chapter, which occurs outside of a fully enclosed building.

I. **NIGHTCLUB,** shall mean any bar, cocktail lounge, karaoke bar or similar establishment with Entertainment and alcoholic beverage sales operating under a Type 42 or Type 48 Department of Alcoholic Beverage Control license (On-sale General—Public Premises) or similar license.

3.08.030 Permit required.

It shall be unlawful for any person or business to provide in, or upon, any premises within the City, Entertainment without an Entertainment Permit issued by the City pursuant to the provisions of this chapter.

3.08.040 Exempt Activities.

The provisions of this chapter shall not apply to any of the following:

A. Any entertainment consisting solely of auditions, as that term is defined in this chapter;

B. Any amateur who sings while in, and a part of, any audience, excluding karaoke;

C. Entertainment provided in, and with the consent of any person in control of, any public park, stadium, arena, circus, fairground, auditorium or upon any educational, governmental or military property;

D. Any entertainment provided in any theater not a part of, or having any entrance in common with, any restaurant;

E. Any entertainment provided at, during, and with the consent of the person in charge of, any meeting, game, contest, picnic or outing of, and exclusively for, any non-profit religious, fraternal, charitable, humanitarian, governmental, military, veterans, civic, youth, school, business, commercial, educational, musical, dramatic, literary, sporting, social, labor, employee, or service club or group, or any similar non-profit private club or group;

F. Entertainment (Minor Acoustical) as that term is defined in this Chapter.

3.08.050 Entertainment Permit Application Fees.

A. Any person desiring to obtain an Entertainment permit shall submit an application to the Chief of Police or their designated representative in the manner and form described in this chapter. At the time of submittal of such application, a nonrefundable fee as established by resolution of the City Council shall be paid to defray the cost of review, investigation, report, and inspections required by this chapter.

B. The submission of an application for an Entertainment Permit does not authorize the Entertainment until such permit has been granted by the Chief of Police or their designated representative.

3.08.060 Entertainment Permit Application Contents.

An application for an Entertainment Permit shall include, but not be limited to, the following information:

A. The business name and address of the location where the entertainment will occur.

B. Written, notarized authorization from the property owner authorizing the applicant to apply for an Entertainment Permit.

C. A complete floor plan of the location where the entertainment will occur. The floor plan shall identify where within the establishment the entertainment will be performed. Entertainment which moves throughout the establishment (e.g., strolling musician) shall be identified as such.

D. A detailed description of the type of entertainment that is proposed.

E. The address, telephone number and e-mail contact of the Entertainment Permit applicant.

F. Acceptable written proof that the applicant is at least (18) eighteen years of age. If the applicant is to be employed in a place of business where alcoholic beverages are to be sold or consumed, the applicant shall provide acceptable written proof that the applicant is at least (21) twenty-one years of age;

G. Dates and times when the entertainment is to occur.

H. Contact person(s), title (e.g., manager, owner, agent, etc.) and phone number at the business location where the entertainment will occur.

I. A Security and Operations Plan which includes, but is not limited to, the number of security personnel, equipment and cameras, security practices and any other pertinent information as determined by the Police Department to be necessary to evaluate the adequacy of security for the establishment where Entertainment is provided.

J. Copy of the Department of Alcoholic Beverage Control license (if applicable) at the location where the entertainment will occur.

K. All convictions, including ordinance violations, exclusive of traffic violations, stating the dates and places of any such conviction;

L. Such other identification and information as required by the Police Department.

3.08.070 Entertainment Permit Application Review and Investigation.

A. Upon receipt of the completed application, the Chief of Police, or their designee, in consultation with other applicable City departments, shall review the application and conduct an investigation, including, but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency.

B. The Chief of Police, or their designee shall grant the permit if they find that all of the following components have been provided:

1. The required fee has been paid.

2. The application conforms in all respects to the requirements in Section 3.08.060 of this chapter.

3. The applicant has not made any false, misleading or fraudulent statements in the application.

4. The applicant has fully cooperated in the investigation of his or her application.

5. The applicant has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, California Health and Safety Code Section 11590, or of conduct violating Penal Code Section 647(a), 647(b), or any crime involving dishonesty, fraud or deceit.

6. The applicant is at least eighteen years of age; or, if the applicant is to be employed in a place of business where alcoholic beverages are to be sold or consumed, the applicant is at least twenty-one years of age.

7. The applicant has not engaged in conduct which would constitute grounds for suspension or revocation under this chapter.

8. The applicant has not had an Entertainment Permit denied or revoked within the past six months.

9. The business establishment in which the Entertainment is proposed has operated in good standing with the City regarding calls for service, violations of the Municipal Code, compliance with land use entitlements, or violations from the Department of Alcoholic Beverage Services.

3.08.080 Entertainment Permit - Denial.

If the Chief of Police, in consultation with other City Departments, and following investigation of the applicant, finds that the Permittee does not fulfill the requirements set forth in this chapter, the Chief of Police shall deny the application and notify the Permittee in writing of such denial.

3.08.90 Appeal Process.

Any Permittee who is denied a permit by the Chief of Police may appeal such denial to the Hearing Officer, pursuant to the provisions of this chapter.

A. The permittee shall file a written appeal with the City Clerk within (10) ten business days of the date of mailing of the notice of denial, suspension or revocation.

B. The Hearing Officer shall schedule a hearing to be held within (10) ten business days after the filing of the appeal.

C. Notice of the date, time and place of the hearing shall be mailed to the applicant at least (10) ten days prior thereto.

D. The Hearing Officer, in his/her sole discretion, may grant or deny a continuance, may dissolve stays of pending orders of denial, suspension or revocation.

E. The Hearing Officer, shall determine, after consideration of all evidence presented, whether a permit should be issued, reinstated, suspended or revoked. The decision of the Hearing Officer shall be final.

3.08.100 Appeal hearing.

The following rules of evidence shall apply:

A. Oral evidence shall be taken only under oath or affirmation. The Hearing Officer shall have authority to administer oaths, and to receive and rule on admissibility of evidence.

B. Each party shall have the right to call and examine witnesses, to introduce exhibits and to cross-examine opposing witnesses who have testified under direct examination. The Hearing Officer may call and examine any witness.

C. Technical rules relating to evidence and witnesses shall not apply to hearings provided for herein. Any relevant evidence may be admitted if it is material and is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory law which might make admission of such evidence improper over objection in civil actions. Hearsay testimony may be used for the purpose of supplementing or explaining any evidence given in direct examination, but shall not be sufficient in itself to support a finding unless such testimony would be admissible over objection in civil actions. The rules of privilege shall be applicable to the extent that they now, or hereafter, are permitted in civil actions. Irrelevant, collateral, undue, and repetitious testimony shall be excluded.

3.08.110 Entertainment Permit Validity and Renewal.

Entertainment Permits are valid for a period of one year and may be renewed upon approval of a renewal application. The renewal fee for an Entertainment Permit shall be set by resolution of the City Council. The permittee shall submit an application for permit renewal which shall provide any updated information as required under this chapter for the original application. Renewal of the permit shall be based on the same criteria as the original Entertainment Permit.

3.08.120 Existing Entertainment Permits - Validity.

In the event of any amendments to this chapter, existing Entertainment Permits approved prior to any amendments to this chapter, shall be valid until the expiration date of the existing

Entertainment Permit. At such time the establishment must comply with all aspects of this chapter in order to be issued an Entertainment Permit.

3.08.130 Change of Ownership – Non-Transferable Permits.

No Entertainment Permit may be sold, transferred or assigned by a permittee, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void.

3.08.140 Baseline Operational Requirements for Entertainment Establishments.

The following baseline operational requirements shall be applicable to all businesses with an Entertainment Permit. The Chief of Police, in consultation with other departments, may require additional conditions of approval on an Entertainment Permit based on the specific location and operational characteristics of the business. These requirements do not modify or limit in any way the authority of the Chief of Police to enforce Penal Code Section 415 (disturbing the peace) against any person, or of the Chief of Police or the Fire Marshal to immediately take action in the event of an imminent threat to public health or safety.

A. Compliance with laws. All individuals and/or business entities who obtain an Entertainment Permit shall comply with all applicable laws, regulations, ordinances and stated conditions.

B. Time Restrictions. Entertainment may not take place between the hours of 2:00 A.M. and 8:00 A.M. The time restrictions may be further limited by an applicable Conditional Use Permit or Entertainment Permit.

C. Type, Manner and Hours of Operation. The type, manner, frequency, dates and times during which entertainment is provided shall be limited to what is expressly indicated on the Entertainment Permit. Any substantial changes to the type, manner, frequency, dates or times of Entertainment shall require the Permittee to submit an application for an amendment to the Entertainment Permit, which shall be processed in the same manner as a new Entertainment Permit, prior to making any changes to the business operation.

D. No Adult Entertainment, as defined by Fullerton Municipal Code Section 7.95, shall be conducted on the permitted premises. Permittees shall not allow, permit, procure, or encourage, anyone to expose male or female genitals, cleft of the buttocks, the areola or any portion of the female breast below the areola, while at or inside the business.

E. Outdoor Entertainment. Any Entertainment (Outdoor), excluding Ambient Music is prohibited except within the boundaries of the Downtown Commercial Noise Zone as defined in Chapter 15.90.

F. Permit posted on site. Permittees shall place or post an approved Entertainment Permit including conditions of approval on the premises in a place easily accessible by City staff.

G. Promoters. Neither the business, nor anyone on its behalf, shall share any profits, or pay any percentage or commission to a promoter or otherwise receive compensation for use of the facilities.

H. Advertising. Permittee shall not distribute, post or attach, and shall be responsible for ensuring that no agents on its behalf, distribute, post or attach, advertising matter on public property, public right-of-way, or on any vehicle on public property.

I. Noise. Permittee shall ensure that noise emanating from the business shall not be unreasonably loud or disturbing and shall comply with the noise standards contained in Chapter 15.90.

J. Occupancy. Building occupancy loads shall be posted at all times. Permittee shall be responsible to keep count of the number of occupants present at any given time and provide that information to City staff upon request.

K. Security Plan. Permittee shall be responsible for adhering to the Security Plan reviewed and approved by the Chief of Police, or their designee. Modifications to the approved Security Plan shall be reviewed and approved by the Police Department prior to making any changes to security operations. It is the responsibility of the business establishment to update the Security Plan on file with the City when/if there are any changes in the operational characteristics of the establishment which may alter the contents of the security plan. Changes in business name and/or ownership shall require an updated security plan to be provided to the City.

L. Loitering. Permittee shall take steps to prevent patrons from loitering in the immediate area, littering or making excessive noise outside of the establishment and at closing time.

M. Doors and windows. All exterior doors and windows must be closed during the hours of Entertainment, except to allow ingress or egress of patrons, or in the case of emergencies. Exceptions to this requirement may be considered as part of a conditional use permit based on the business location, building design, and business operations.

3.08.150 Operational Restriction Procedures.

In the event that the Permittee fails to comply with the Baseline Operational Requirements and/or conditions of approval of the Entertainment Permit, the Chief of Police, in consultation with other City departments, may elect to take the following steps to minimize impacts to health, safety and welfare, and gain compliance with all applicable laws, regulations, ordinances and stated conditions. Decisions by the Chief of Police to exercise the below operational restrictions shall not be appealable:

A. Step 1 – Remedy Meeting. Should the Chief of Police, in consultation with other City departments, determine that Permittee has violated the terms of the Entertainment Permit, including Permittee's obligation to comply with all Federal, State and local laws and regulations, they may require the Permittee to attend a meeting with the Chief of Police and any other applicable departments to discuss the violations and specify actions that will be undertaken by the Permittee to address the violations. Failure by the Permittee to attend this meeting shall not restrict the City from imposing additional operational restrictions on the business.

B. Step 2 - Restrictions. In the event that Step 1 – Remedy Meeting does not result in compliance with the terms of the Entertainment Permit within 30 days, or within a timeframe otherwise specified by the City, Permittee will be notified in writing that the business must comply with

any or all of the following Step 2 - Restrictions for a period of 30 days, or for a period otherwise specified by the City.

1. No Entertainment of any kind shall be permitted after midnight, or 1:00 A.M., at the discretion of the City;

2. No outdoor queuing shall be permitted after 11:00 P.M. or midnight, at the discretion of the City;

3. Provision of additional security personnel at hours determined necessary by the Chief of Police and/or implementation of additional security measures, including but not limited to, security check procedures for incoming patrons;

4. Any additional measures determined necessary by the City may be imposed to protect public health and safety.

5. Step 3 - Restrictions. In the event that Step 2 – Restrictions do not result in compliance with the terms of the Entertainment Permit within 30 days, or within the timeframe otherwise specified by the City, Permittee will be notified in writing that the business must comply with any or all of the following Step 3 - Restrictions for a period of 30 days, or for a period otherwise specified by the City.

    a. No Entertainment of any kind shall be permitted after 10:00 P.M.;
    b. No outdoor queuing shall be permitted after 10:00 P.M.;
    c. Provision of additional security personnel at hours determined necessary by the Chief of Police and/or implementation of additional security measures, including but not limited to, security check procedures for incoming patrons;

    d. Any additional measures determined necessary by the City may be imposed to protect public health and safety.

3.08.160 Entertainment Permit Suspension or Revocation.

The Chief of Police in consultation with other City departments, may suspend or revoke an Entertainment Permit if a permittee has:

A. Violated any provision of this Chapter;

B. Violated conditions of the Entertainment Permit;

C. Not modified their operations in compliance with Step 2 and/or Step 3 Restrictions and Permittee continues to violate the terms and conditions of the Entertainment Permit, as required by the Chief of Police;

D. Made any false, misleading, or fraudulent statements in the application; or

E. Been convicted of a felony or misdemeanor involving dishonesty, fraud, or deceit.

F. The permittee shall be provided with written notice of such suspension or revocation. The permittee may file an appeal to City Council with the City Clerk within (10) ten calendar days

of the date of mailing of the notice of revocation. If no appeal is filed, the revocation shall become effective upon expiration of the period for filing appeals.

3.08.170 Excessive Police Services Required

As a result of any incident or nuisance arising out of or in connection with Permittee's operations, the cost of such services may be billed to Permittee as an expense of those costs incurred by the City of Fullerton in making any appropriate emergency response to the incident, and shall be comprised of all costs directly arising because of the response to the particular incident, including, but not limited to, the costs of providing police, firefighting, rescue, and emergency medical services at the scene of the incident, as well as the salaries of the personnel responding to the incident.

3.08.180 Violation - Penalty.

Any person violating any section of this chapter shall be guilty of a misdemeanor.

3.08.190 Severability.

If any word, phrase, clause, sentence or section of this chapter is for any reason invalid, such invalidity shall not impair the validity of any other part of this chapter and the City Council hereby declares that it would have enacted each and every part of this chapter without any such invalidity of any other part thereof.

SECTION 6. CEQA. This ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15061(b)(3) General Rule Exemption because the proposed code amendments do not have potential to cause a significant effect on the environment as the proposed code amendments do not substantially alter the types of permitted and conditionally permitted land uses nor their operational characteristics.

SECTION 7. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law. This Ordinance shall become effective thirty (30) days from and after its passage.

ADOPTED BY THE FULLERTON CITY COUNCIL ON _____, 2019.

_____
Jesus J. Silva, Mayor

ATTEST:

_____
Lucinda Williams, City Clerk

_____
Date