



## CITY OF FULLERTON

Community Development Department

Item No. 3  
February 27, 2019  
7:00 p.m.  
Public Hearing

TO: Chair Gaarder and  
Members of the Planning Commission

### APPLICATION

PRJ18-00183 / LRP18-00006

### APPLICANT

City of Fullerton

### SUMMARY OF REQUEST

The following amendments to the Fullerton Municipal Code are proposed for consideration and recommendation by the Planning Commission to the City Council: 1) amend Titles 15.04, 15.30, 15.31 and 15.71 of the Zoning Code to update development and operational standards, processes and enforcement tools relating to businesses selling alcohol for on-site consumption; and 2) amend Title 15.90 (Noise Standards and Regulation) to create a Downtown Commercial Noise zone and update regulations pertaining to noise measuring instruments.

An associated amendment to Chapter 3.08 (Live Entertainment) updating standards, processes and enforcement tools is provided to the Commission for reference, and will be considered by City Council in association with proposed amendments to Title 15 (Zoning Code).

### AUTHORIZATION

The City Council adopted Resolution No. 2018-31 on June 5, 2018 stating its intention to consider amendments to the Fullerton Municipal Code (FMC) updating development and operational standards, processes and enforcement tools for businesses selling alcohol for on-site consumption.

FMC Sections 15.72.040 and 15.72.050 authorize the Planning Commission to hold a public hearing to consider an amendment to FMC Title 15 and to determine whether the proposed amendment is consistent with the objectives of the Zoning Ordinance and the General Plan. While the proposed amendments to Chapter 3.08 do not fall within the purview of the Planning Commission, the proposed amendments to that Chapter are closely linked with the amendments to Title 15 and are presented in this report to provide a complete picture of the regulatory scheme proposed.

#### THE EDUCATION COMMUNITY

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## **PUBLIC OUTREACH AND HEARINGS**

In May 2018, staff held a community meeting to discuss the “Downtown Game Plan”, including proposed changes to restaurant regulations. Throughout summer 2018, staff conducted a series of outreach meetings with various downtown stakeholders regarding the Downtown Game Plan and proposed restaurant regulation amendments.

In August 2018, staff held a Planning Commission workshop and community meeting to gather feedback and input from the Commission and community on the proposed restaurant regulations.

On November 28, 2018, the Planning Commission held a duly noticed public hearing on the proposed code amendment. Following a presentation by staff, testimony from the public and questions from the Commission, the Planning Commission voted to continue this item for three months to allow staff time to continue to refine the proposed regulations.

Because the Planning Commission public hearing was not continued to a date certain, required meeting notices for today’s hearing were published in the newspaper on February 15, 2019 and posted on the City’s website and at the Maintenance Services Department, Main Library, Museum Center and City Hall on the Public Notice Boards. Meeting notices were mailed to 480 property owners and business owners within the downtown area, and a notice advertising the Planning Commission meeting was posted on the City’s NextDoor account, and separate notification was provided to the Fullerton Observer.

Lastly, staff from the Community Development Department and Police Department held a meeting with Downtown restauranteurs on Wednesday, January 30th to discuss the proposed changes to the restaurant regulations. Over 36 attendees representing 19 downtown restaurants/bars participated and provided recommendations and feedback on the proposed amendments.

## **PROJECT BACKGROUND**

In December 2002, the Restaurant Overlay District (ROD) was adopted by the City Council. The ROD was established as an economic development tool to streamline the approval process for non-drive-through restaurants within the downtown by allowing restaurants to expand and/or locate in and around the Central Business District without the need to provide on-site parking or to obtain a Conditional Use Permit (CUP), as had previously been required. The ROD boundaries were determined by the City Council based on a parking study which found that the downtown contained ample public parking within a reasonable distance of the ROD boundaries. The provisions of the ROD only applied to businesses defined as a “Restaurant” in Chapter 15.04 of the Fullerton Municipal Code and specifically excluded drive-through eating establishments and bars. In 2006, the northern boundary of the ROD was expanded to coincide with the same boundary of the commercially zoned properties within the Central Business District (CBD).

In May 2007, City Council directed staff to develop options for additional regulatory and/or permitting measures to address negative impacts associated with the concentration of restaurants operating with late night hours in Downtown.

In June 2007, City Council enacted a moratorium on any new or expanded restaurants serving alcohol, and/or entertainment permits within the boundaries of the ROD. This “time out” provided time for public safety personnel to address disruptive behavior associated with the increasing

concentration of restaurants with late night hours in the downtown area, and to provide staff with an opportunity to develop new regulatory tools for Council consideration.

In March 2008, City Council amended Title 15 to create the Administrative Restaurant Use Permit (ARUP) process and establish regulations for downtown restaurants and bars. The adopted ordinance contained 50 standard conditions that provided detailed, prescriptive operational and development standards for restaurants and bars.

In 2016 the Municipal Code was amended to expand the requirement for establishments wishing to sell alcohol for on-site consumption to apply for an Administrative Restaurant Use Permit citywide.

To ensure that downtown Fullerton continues to be an attractive place for business investment, a source of community pride and a safe and inviting place for residents, staff conducted a thorough review and evaluation of the current regulatory processes, development and operational standards, and enforcement tools relating to downtown restaurants and bars. Planning staff also consulted with the Fullerton Police Department, Department of Alcoholic Beverage Control (ABC), alcohol policy consultants and other cities to ensure that the proposed regulations reflected best practices related to regulating alcohol serving establishments, with and without entertainment.

## **PROPOSED REGULATIONS**

The proposed ordinance amends several chapters within Title 15 related to businesses that sell alcohol for on-site consumption, the Administrative Restaurant Use Permit and regulations pertaining to noise levels. Based on the feedback received from the Planning Commission at the November 28, 2018 meeting and subsequent one-on-one meeting with Commissioners, the following modifications were made to the proposed amendment:

- Revised the permitted uses to include micro-breweries and micro-brewery tasting rooms as permitted uses in the G-C, C-3 and C-M zones with the approval of an Administrative Restaurant Use Permit (ARUP).
- Removed restrictions on drink specials as a standard operational requirement.
- Separated the proposed changes to Chapter 15.90 (Noise Standards and Regulation), including the creation of the Downtown Commercial Noise Zone, into a separate recommended action by the Planning Commission.
- Expanded the Downtown Commercial Noise Zone to include the Villa Del Sol property within the proposed noise boundary.
- Modified Chapter 15.90 (Noise Standards and Regulation) to revise the proposed noise standards within the Downtown Commercial Noise Zone on Friday and Saturday nights from 10:00 PM to 1:30 AM to a maximum 65 dB(A) at an affected property (interior) and maximum 70 dB(A) at affected property (exterior).

A summary of the amendments in each chapter are more fully described below, with the complete draft ordinance language provided as Attachments 1 and 2:

### Chapter 15.04 (Interpretations and Definitions):

Proposed amendments to this Chapter include new and amended definitions to the types of uses and activities related to entertainment and businesses with on-site alcohol sales. New definitions

include: Ambient Music, Nightclub, Entertainment, Entertainment (Minor Acoustical) and Entertainment (Outdoor) and amended definitions for restaurants with on-site alcohol sales, with and without, entertainment.

Chapter 15.30 (Commercial Zone Classifications):

Proposed amendments to this Chapter include updates to the permitted and conditionally permitted uses in the Office, Professional (O-P), General Commercial (G-C), Downtown Commercial (C-3) and Commercial, Manufacturing (C-M) zones summarized in the table below. The proposed amendment also adds micro-brewery with tasting rooms as a listed use in the G-, C-3 and C-M zones.

Zone	Restaurant Only	Restaurant w/ Alcohol	Restaurant w/ Entertainment (No alcohol)	Restaurant w/ Entertainment & alcohol	Bar, Cocktail Lounge, Nightclub [Public Premise ABC]
	<b>No Change</b>	<b>No Change</b>	<b>NEW</b>	<b>NEW</b>	<b>No Change</b>
<b>(C-3)</b>	By Right	ARUP	Entertainment Permit	CUP/ Entertainment Permit	CUP Entertainment Permit
<b>(G-C)</b>	By Right	ARUP	Entertainment Permit	CUP/ Entertainment Permit	CUP Entertainment Permit
<b>(O-P)</b>	CUP	CUP	CUP	CUP/ Entertainment Permit	Not permitted
<b>(C-M)</b>	By Right	ARUP	Not permitted	Not permitted	Not permitted

Chapters 15.30.040.H and 15.31 (Businesses Selling Alcohol for On-Site Consumption):

A majority of the current development and operational standards related to businesses selling alcohol for on-site consumption were contained in Chapter 15.30.040.H. The proposed amendment will repeal this subsection and replace it with a stand-alone Chapter (Chapter 15.31). The newly created Chapter 15.31 will provide operational and enforcement procedures for businesses selling alcohol for on-site consumption.

Chapter 15.71 (Administrative Restaurant Use Permit):

Proposed amendments to this Chapter include clarifications and simplifications to the ARUP process. These changes include the creation of findings for the approval of an ARUP, the procedure for review of ARUP applications and the process to amend an ARUP based on changes to the physical space or operational characteristics of the establishment.

Chapter 15.90 (Noise Standards and Regulation):

Proposed amendments to this chapter include the creation of a Downtown Commercial Noise Zone which acknowledges the unique characteristics of the Downtown and creates specific noise standards for all properties within the specified boundary. Decibel limits within the Downtown



Commercial Noise Zone are further broken down into maximum permitted noise limits at the affected property (interior) and affected property (exterior) to further clarify where the noise measurements are taken. Another amendment to this chapter is to clarify the type of noise detecting equipment that can be used to determine compliance with the noise standards to account for improved noise detecting technology that is now commercially available. All properties located outside of the Downtown Commercial Noise Zone are subject to current citywide noise standards, and properties outside of the Commercial Noise Zone will enjoy the same protections currently afforded by the citywide noise ordinance.

Title 3, Chapter 3.08 (Live Entertainment):

Regulations related to definitions, application, review and enforcement of Live Entertainment Permits are within Chapter 3.08 (Live Entertainment) of the Fullerton Municipal Code. The proposed amendments to this Chapter include the creation of new definitions for what constitutes Entertainment and related activities, the creation of a revised application and review process for Entertainment Permits, minimum baseline operational standards for businesses proposing Entertainment and a tiered operational restriction process for businesses that violate the terms of their Entertainment Permit.

<b>ANALYSIS</b>
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As referenced in the background section, the proposed amendments are the culmination of a lengthy data gathering, outreach and iterative process with internal City stakeholders, regulatory agencies and downtown business operators. Analysis of the proposed amendments can be divided into the following categories:

Clarification / Simplification:

**Clarify Distinction between ARUP and CUP:** Under the current code, a restaurant that sells alcohol for on-site consumption is allowed to apply for an ARUP if the business agrees to comply with fifty standard development and operational requirements listed in Chapter 15.30.040.H. If a business wishes to deviate from one or more of these requirements, they are required to get a CUP. This “deviation by CUP” process has resulted in inconsistency as to what regulations / operational standards are applicable to each business which has made enforcement of those regulations challenging for City staff and the Police Department. This is further exacerbated by the Live Entertainment Permit process which operates independently from the land use entitlement and allows a restaurant with an ARUP to seemingly operate in a manner that would otherwise require a CUP.

The proposed amendment provides a clear distinction as to whether a business requires an Administrative Restaurant Use Permit (ARUP) or a Conditional Use Permit (CUP). Restaurants that provide on-site alcohol sales with entertainment will be required to obtain a CUP and an Entertainment Permit. A restaurant that has on-site alcohol sales without Entertainment will be required to obtain an ARUP.

**Elimination of Prescriptive Standards:** Ordinance Nos. 3113 and 3114, adopted by the City Council in 2008, created prescriptive licensing, development and operational standards for downtown restaurants and bars. This approach was considered necessary at the time to address the negative impacts associated with restaurants and nightclubs that were opening in Downtown from 2002 to 2007. After ten years of implementing this approach, it has become clear that there

is a need to revisit these regulations to simplify the development and operational standards so they are more easily understood by property owners, business operators and the general public; and, enforceable by City staff and the Police Department.

The proposed amendments to Title 15 revise or remove prescriptive standards that have been found to be ineffective or unenforceable related to: indoor/outdoor lighting, noise, queuing areas, cover charges, outdoor dining/patio areas and doors and windows with common sense regulations that reduce reliance on specialized equipment and/or technical expertise for enforcement. The proposed amendment will also revise standards related to the percentage of permitted alcohol and food sales for bona fide eating places (restaurants) to be in alignment with California Department of Alcohol Beverage Control policies and requirements.

**Enhanced Security and Operational Plans:** The proposed regulations require the business operator to take a more active management role through the development of Security and Operational Plans that will be developed in partnership with the Police Department. The Security and Operational Plan will include, but not be limited to, the following:

- The type, training, number and location of security personnel;
- The use of video surveillance on the interior and exterior of the establishment;
- Lighting plans which ensure all areas of the establishment (inside and out) are lighted sufficiently to make all activities easily discernable;
- Posting of signage related to over-serving and requirements for identification;
- Policies and procedures for controlling access and managing intoxicated patrons and disputes; and
- Maintenance of the exterior areas of the building, including the removal of trash/debris/graffiti from the exterior of the building on a nightly basis.

#### Noise Regulations / Outdoor Entertainment:

The FMC currently allows for amplified outdoor music in the Downtown area subject to approval of a Conditional Use Permit. Since 2008 there have been several requests for outdoor entertainment; however, the Planning Commission has not taken action on these requests. In 2014, the Commission requested that the City Council provide policy direction on this issue. At its meeting on September 16, 2014, the City Council adopted a Resolution of Intention to amend Title 15 related to noise. Several acoustical studies have been performed to evaluate the downtown noise environment, including recommendations for development standards, but to date, no amendments to this chapter have been adopted by the City Council.

The proposed amendment to Chapter 15.90 (Noise) incorporates several concepts from previous noise recommendations while recognizing the unique environment of Downtown Fullerton through the creation of a Downtown Commercial Noise Zone (see below and Attachment No. 2). Within this predominantly commercial area, increased levels of noise would be permitted on Friday and Saturday nights between 10:00 p.m. and 1:30 a.m. (see Table 1 below). This amendment would address a long-standing disconnect between the typical operating noise levels at downtown restaurants and the City's adopted noise ordinance. Outside of the Downtown Commercial Noise Zone, outdoor entertainment, excluding ambient music, would be prohibited.

Additionally, the proposed amendment creates a new definition of Entertainment (Outdoor) which includes live musical performances, disc jockey or any other amplified or reproduced music which is played at a volume above what is defined as Ambient Noise. Businesses within the Downtown

Noise Zone requesting to provide outdoor entertainment will be required to get an Entertainment Permit and a Conditional Use Permit, but in no cases will those businesses be allowed to exceed the maximum decibel restrictions created in Chapter 15.90.

### Downtown Commercial Noise Zone Map



### Downtown Commercial Noise Zone time/decibel restrictions

Day of the week	Hours	Max dB(A) at affected property (interior)	Max dB(A) at affected property (exterior)
Monday - Thursday	7:00 a.m.-10:00 p.m.	55 dB(A)	55 dB(A)
Monday - Thursday	10:00 p.m.-7:00 a.m.	55 dB(A)	55 dB(A)
Friday – Sunday	7:00 a.m.-10:00 p.m.	60 dB(A)	65 dB(A)
Friday – Sunday**	10:00 p.m. – 1:30 a.m.	65 dB(A)	70 dB(A)

\*\* Sunday morning after 1:30 a.m., noise standards shall be the same as Monday-Thursday (10:00 p.m. to 7:00 a.m. standard [60dB(A)]).

Amendments to Entertainment Permit Regulations and Processes (Chapter 3.08):

Proposed changes to Chapter 3.08 will be considered by the City Council in conjunction with amendments to Title 15 considered by the Planning Commission as part of this item. For purposes of the Planning Commission's and public's understanding of the regulatory framework for restaurants with on-site alcohol sales and entertainment, staff has included a discussion of the proposed changes to Chapter 3.08 as part of this report.

Live Entertainment Permits are reviewed and issued by the Police Department pursuant to Chapter 3.08 (Live Entertainment). Several of the definitions contained in Chapter 3.08 are either out of date, or are inconsistent with similar definitions contained in Title 15. The proposed amendments to Chapter 3.08 standardizes definitions with Chapter 15 (Zoning Code), including an expanded definition of Entertainment as follows:

“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.”

Proposed changes to Chapter 3.08 provide the Police Department with an improved framework to regulate the operations of restaurants with entertainment. The proposed amendment includes new operational requirements, including the requirement for enhanced security and operational plans, and the creation of a tiered enforcement process for businesses that fail to comply with their Entertainment Permit.

In the event that a business is operating out of compliance with their Entertainment Permit, the Chief of Police would follow the following enforcement procedures:

**Step 1 - Remedy Meeting:** The permittee would be required 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.

**Step 2 – Tiered Enforcement:** Should the remedy meeting not result in compliance with the terms of the Entertainment Permit within a specified time, the Chief of Police can impose operational restrictions on the Businesses' Entertainment Permit including:

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

**Step 3 – Tiered Enforcement:** If these restrictions still do not result in compliance with the terms of the Entertainment Permit, the Chief may impose further operational restrictions including:

1. No Entertainment of any kind shall be permitted after 10:00 p.m.;
2. No outdoor queuing shall be permitted after 10:00 p.m.;
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; and
4. Any additional measures determined necessary by the City may be imposed to protect public health and safety.

Interdepartmental Coordination:

In addition to the proposed Code amendments, the City has created an inter-departmental working group comprised of representatives from the Police Department, Code Enforcement, Fire Department, Planning, Business Registration and the Department of Alcoholic Beverage Control (ABC) which meets bi-monthly to discuss issues related to downtown activities, special events, new restaurants and related issues. The primary goal of this working group is to maintain open communication between departments and work proactively with business operators, property owners and security personnel to address concerns as quickly as possible.

Applicability of Code Amendment to Existing Businesses:

The provisions of the proposed code amendments will be applicable to all new businesses requesting to operate in the City from the effective date of the proposed ordinance. Existing businesses that were legally established and are currently operating without a CUP or ARUP may continue to operate provided there are no major operational changes or physical expansions to the business. These “non-conforming” businesses will be still be subject to the proposed Entertainment Permit process and operational requirements should they wish to continue to provide entertainment. Any future changes in operational characteristics or expansion in area will require the business to obtain a Conditional Use Permit.

Existing businesses that are operating pursuant to an existing CUP or ARUP may continue to operate, subject to the conditions of approval specified in their entitlement. These businesses will also be subject to the amended Entertainment Permit process and operational requirements. Existing businesses requesting to modify their operational characteristics, expand their business, or amend their conditions of approval will be required to amend their ARUP or CUP, as applicable.

It is anticipated that many of the businesses in Downtown who are operating under an existing CUP or ARUP will want to amend their use permit to remove outdated or prescriptive conditions of approval. Staff will recommend that Council allow for a one (1) year period in which restaurants wishing to amend their entitlements to be in compliance with the new Code, or wishing to obtain an entitlement for an existing nonconforming business, be allowed to do so without paying for an amendment to their land use entitlement.

## ENVIRONMENTAL REVIEW

This Ordinance Amendment is exempt from CEQA based on CEQA Guidelines Section 15601(b)(3), General Rule Exemption that there is no possibility that an activity has the potential to have a significant effect on the environment as the proposed code amendments do not substantially alter the types of permitted and conditionally permitted land uses.

## REQUIRED FINDINGS

Pursuant to Fullerton Municipal Code Section 15.72.050, in order to recommend approval of the proposed Zoning Ordinance Amendment, the Planning Commission shall first make the findings listed below. If the Planning Commission can make the following findings, then it is appropriate to recommend approval of project PRJ18-00183. Conversely, the inability to make these findings would result in a recommendation for denial. The information and analysis presented in the Staff Report and the following facts and findings form the basis for the staff recommendation.

Finding 1: The proposed Zoning Ordinance amendment is consistent with the objectives of the Zoning Ordinance and General Plan.

Fact: The amendment is authorized by FMC Chapter 15.72. In addition, the City Council adopted a Resolution of Intention on June 5, 2018 to update the Municipal Code stating its intention to consider amendments to the Fullerton Municipal Code (FMC) updating development and operational standards, processes and enforcement tools for businesses selling alcohol for on-site consumption.

Fact: This amendment is consistent with multiple General Plan policies, including the following:

**P1.11 Compatibility of Design and Uses:** Support policies and regulations to consider the immediate and surrounding contexts of projects to promote positive design relationships and use compatibility with adjacent built environments and land uses, including the public realm.

**P8.3 Consideration of Noise in Land Use Decisions:** Support policies and regulations which ensure noise-compatible land use planning recognizing the relative importance of noise sources in order of community impact, the local attitudes towards these sources, and the suburban or urban characteristics of the environment, while identifying noise sensitive uses.

**P10.12 Downtown Economy Diversification:** Support programs and regulations that diversify the Downtown economy to create more economic activity.

**P10.16 Economic Strategies in Focus Areas:** Support policies and regulations pertaining to planning efforts for the City's Focus Areas that facilitate investment and encourage economic activity that benefits the Fullerton community and the City.

**P12.11 Public Safety in Focus Areas:** Support policies and regulations to proactively address public safety concerns as part of community-based planning of Focus Areas.

**P13.11 Crime Reduction Strategies:** Support policies and regulations to create problem-solving strategies and plans for areas with higher crime rates in the City and to reduce crime by implementing these strategies and plans through a range of



measures including increased policing activities, neighborhood partnerships and other innovative programs.

**Finding 2:** The proposed Zoning Ordinance amendment promotes the public health, safety and welfare of the community.

**Fact:** The proposed amendment to Title 15 will promote the public health, safety and welfare by providing clear and enforceable standards for noise levels within the Downtown Commercial Noise Zone boundaries while maintaining current maximum noise level restrictions for all properties outside of the noise boundary.

<b>RECOMMENDED ACTION</b>
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- Adopt Planning Commission Resolution No. PC-2019-03 entitled:

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL AMEND FULLERTON MUNICIPAL CODE CHAPTERS 15.04, 15.30, 15.31 AND 15.71 TO UPDATE DEVELOPMENT AND OPERATIONAL STANDARDS, PROCESSES AND ENFORCEMENT TOOLS FOR BUSINESSES SELLING ALCOHOL FOR ON-SITE CONSUMPTION**

- Adopt Planning Commission Resolution No. PC-2019-02 entitled:

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL AMEND FULLERTON MUNICIPAL CODE CHAPTER 15.90 TO UPDATE NOISE STANDARDS AND REGULATIONS.**

**DATED:** February 27, 2019

Prepared by:



Matt Foulkes  
Planning Manager

Reviewed and Approved for Agenda:



Ted White, AICP  
Community Development Director

**Attachments to Report:**

1. Draft Planning Commission Resolution PC-2019-03
2. Draft Planning Commission Resolution PC-2019-02
3. Resolution of Intention No. 2018-31
4. Proposed Chapter 3.08 – Entertainment Permits
5. Existing Chapter 3.08 – Live Entertainment Permits (Reference Only)
6. Existing Chapter 15.30.040 – Limitations on Permitted Uses (Reference Only)
7. Existing Chapter 15.71 – Administrative Restaurant Use Permits (Reference Only)
8. Public Hearing Notice

RESOLUTION NO. PC 2019-03

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL AMEND FULLERTON MUNICIPAL CODE CHAPTERS 15.04, 15.30, 15.31, 15.71 AND TO UPDATE DEVELOPMENT AND OPERATIONAL STANDARDS, PROCESSES AND ENFORCEMENT TOOLS FOR BUSINESSES SELLING ALCOHOL FOR ON-SITE CONSUMPTION

PRJ18-00183, LRP18-00006

APPLICANT: CITY OF FULLERTON

RECITALS:

1. WHEREAS pursuant to FMC §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
2. WHEREAS the Planning Commission of the City of Fullerton has held a duly noticed public hearing, as required by law, for PRJ18-00183-LRP18-00006, 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
3. WHEREAS the proposed Zoning Amendment 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.

RESOLUTION

The Planning Commission finds as follows:

Finding 1: The proposed Zoning Ordinance amendment is consistent with the objectives of the Zoning Ordinance and General Plan.

Fact: The amendment is authorized by FMC Chapter 15.72. In addition, the City Council adopted a Resolution of Intention on June 5, 2018, to update the Municipal Code stating its intention to consider amendments to the Fullerton Municipal Code (FMC) updating development and operational standards, processes and enforcement tools for businesses selling alcohol for on-site consumption.

Fact: This amendment is consistent with multiple General Plan policies, including the following:

**P1.11 Compatibility of Design and Uses** Support policies and regulations to consider the immediate and surrounding contexts of projects to promote positive design relationships and use compatibility with adjacent built environments and land uses, including the public realm.

**P8.3 Consideration of Noise in Land Use Decisions:** Support policies and regulations which ensure noise-compatible land use planning recognizing the relative importance of noise sources in order of community impact, the local attitudes towards

these sources, and the suburban or urban characteristics of the environment, while identifying noise sensitive uses.

**P10.12 Downtown Economy Diversification:** Support programs and regulations that diversify the Downtown economy to create more economic activity.

**P10.16 Economic Strategies in Focus Areas** Support policies and regulations pertaining to planning efforts for the City's Focus Areas that facilitate investment and encourage economic activity that benefits the Fullerton community and the City.

**P12.11 Public Safety in Focus Areas** Support policies and regulations to proactively address public safety concerns as part of community-based planning of Focus Areas.

**P13.11 Crime Reduction Strategies** Support policies and regulations to create problem-solving strategies and plans for areas with higher crime rates in the City and to reduce crime by implementing these strategies and plans through a range of measures including increased policing activities, neighborhood partnerships and other innovative programs

Finding 2: The proposed Zoning Ordinance amendment promotes the public health, safety and welfare of the community.

Fact: The proposed amendments to Titles 3 and 15 will promote the public health, safety and welfare by providing clear and enforceable operational requirements for businesses selling alcohol for on-site consumption and create a more streamlined enforcement process for operators who violate the terms of their land use and/or Entertainment Permits.

THEREFORE, the Planning Commission of the City of Fullerton does hereby recommend APPROVAL of said modifications to Fullerton Municipal Code Title 15 as follows:

[New text in **bold**, deleted text in ~~strike-through~~]

## Chapter 15.04, INTERPRETATION AND DEFINITIONS:

Chapter 15.04.040 shall be amended as follows:

**“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) means 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.**

**RESTAURANT means 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 ON-SITE ALCOHOL SALES means 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.**

**RESTAURANT WITH ENTERTAINMENT means 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.**

**RECEPTION HALL (also BANQUET FACILITY) means 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.”**

Chapter 15.30 shall be 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 the exception that restaurants serving alcohol pursuant to an on-premise liquor sales license issued by the State Department of Alcoholic Beverage Control must also obtain an Administrative Restaurant Use Permit subject to FMC 15.30.040.H and FMC 15.71.~~ **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, ~~with the exception that restaurants serving alcohol pursuant to an on-premise liquor sales license issued by the State Department of Alcoholic Beverage Control must also obtain an Administrative Restaurant Use Permit subject to FMC 15.30.040.H and FMC 15.71.~~ **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 subject FMC 15.30.040.I, **including Tavern and Cocktail Lounge subject to FMC 15.31.**

~~—13. Dancing as an ancillary use to a Restaurant subject to FMC 15.30.040.I~~

~~—20. Live entertainment as an ancillary use to a Restaurant subject to FMC 15.30.040.H~~

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, ~~with the exception that restaurants serving alcohol pursuant to an on-premise liquor sales license issued by the State Department of Alcoholic Beverage Control must also obtain an Administrative Restaurant Use permit subject to FMC 15.30.040.H and FMC 15.71.~~ **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 subject to FMC 15.30.040.I **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** ~~with the exception that restaurants serving alcohol pursuant to an on-premise liquor sales license issued by the State Department of Alcoholic Beverage Control must also obtain an Administrative Restaurant Use permit~~ **subject to FMC 15.30.040.H 15.31 and FMC 15.71.**

Chapter 15.30.040 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. Drink specials. No reduced price alcoholic beverage promotions or “drink specials” shall be allowed at the business after 7:00 p.m.
6. Minimum drinks. The business, or anyone on its behalf, shall not require the purchase of a minimum number of drinks.
7. 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.
8. Noise. Noise generated from the establishment shall not exceed the levels specified in Chapter 15.90.
9. 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.
10. 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.
11. 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]”

**12. 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.

**13. 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 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 (3) notices of violation or citations within a six (6) month period, either administrative, criminal, or both, from the Fire Marshal, the Building Official, Community Preservation officers, and/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 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.**

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.**

**A. 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.**

ADOPTED BY THE FULLERTON PLANNING COMMISSION ON FEBRUARY 27, 2019.

\_\_\_\_\_  
Chris Gaarder, Chair

ATTEST:

\_\_\_\_\_  
Susana Barrios, Recording Clerk

City of Fullerton  
RESOLUTION CERTIFICATION

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) SS  
CITY OF FULLERTON     )

RESOLUTION NO. PC-2019-03

I, Susana Barrios, Recording Clerk of the Landmarks/Planning Commission of the City of Fullerton, California, hereby certify that the whole number of the members of the Planning Commission of the City of Fullerton is five; and that the above and foregoing Resolution No. PC-2019-03 was adopted at a regular meeting of the Planning Commission held on the 27<sup>th</sup> day of February 2019, by the following vote:

LANDMARKS/PLANNING COMMISSIONER AYES:  
LANDMARKS/PLANNING COMMISSIONER NOES:  
LANDMARKS/PLANNING COMMISSIONER ABSENT:

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Susana Barrios, Recording Clerk

RESOLUTION NO. PC 2019-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL  
AMEND FULLERTON MUNICIPAL CODE CHAPTER 15.90 TO UPDATE NOISE  
STANDARDS AND REGULATION

PRJ18-00183, LRP18-00006

APPLICANT: CITY OF FULLERTON

RECITALS:

1. WHEREAS pursuant to FMC §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
2. WHEREAS the Planning Commission of the City of Fullerton has held a duly noticed public hearing, as required by law, for PRJ18-00183-LRP18-00006, to consider amendments to Title 15 of the Fullerton Municipal Code to update noise standards, processes and enforcement related to noise generated by businesses within the Downtown; and
3. WHEREAS the proposed Zoning Amendment will create a Downtown Commercial Noise Zone which will have different noise standards on specified days/times to account for the increased noise generating activities that occur in the Downtown; and
4. WHEREAS the proposed Zoning Amendment acknowledges increased noise levels within a specified area of Downtown while continuing to protect adjacent neighborhoods from impacts related to noise.

RESOLUTION

The Planning Commission finds as follows:

Finding 1: The proposed Zoning Ordinance amendment is consistent with the objectives of the Zoning Ordinance and General Plan.

Fact: The amendment is authorized by FMC Chapter 15.72. In addition, the City Council adopted a Resolution of Intention on June 5, 2018, to update the Municipal Code stating its intention to consider amendments to the Fullerton Municipal Code (FMC).

Fact: This amendment is consistent with multiple General Plan policies, including the following:

**P1.11 Compatibility of Design and Uses** Support policies and regulations to consider the immediate and surrounding contexts of projects to promote positive design relationships and use compatibility with adjacent built environments and land uses, including the public realm.

**P8.3 Consideration of Noise in Land Use Decisions:** Support policies and regulations which ensure noise-compatible land use planning recognizing the relative importance of noise sources in order of community impact, the local attitudes towards

these sources, and the suburban or urban characteristics of the environment, while identifying noise sensitive uses.

**P10.12 Downtown Economy Diversification:** Support programs and regulations that diversify the Downtown economy to create more economic activity.

**P10.16 Economic Strategies in Focus Areas** Support policies and regulations pertaining to planning efforts for the City's Focus Areas that facilitate investment and encourage economic activity that benefits the Fullerton community and the City.

Finding 2: The proposed Zoning Ordinance amendment promotes the public health, safety and welfare of the community.

Fact: The proposed amendment to Title 15 will promote the public health, safety and welfare by providing clear and enforceable standards for noise levels within the Downtown Commercial Noise Zone boundaries while maintaining current maximum noise level restrictions for all properties outside of the noise boundary.

THEREFORE, the Planning Commission of the City of Fullerton does hereby recommend APPROVAL of said modifications to Fullerton Municipal Code Title 15 as follows:

[New text in **bold**, deleted text in ~~strike-through~~]

Chapter 15.90 is hereby amended as follows:

#### **Chapter 15.90 NOISE STANDARDS AND REGULATION**

Sections:

- 15.90.010. Intent and purpose.
- 15.90.020. Definitions.
- 15.90.030. Noise standards.
- 15.90.040. Activities exempt from standards.
- 15.90.050. Activities with special provisions.
- 15.90.060. Noise level measurement.
- 15.90.070. Enforcement.
- 15.90.080. Appeal.

15.90.010. Intent and purpose.

A. In order to control unnecessary, excessive and annoying sounds emanating from incorporated areas of the city, it shall be the policy of the city to prohibit such sounds generated from all sources as specified in this chapter except that noise regulated by any penal statute or ordinance and those activities that have been preempted by state or federal law.

B. Specified noise levels have been determined to be detrimental to the public health, welfare and safety and contrary to public interest; therefore, creating, maintaining, causing or allowing to create, maintain or cause any noise in a manner prohibited by or not in conformity with the provisions of this chapter is a public nuisance and shall be punishable as such.

(Ord. 2982, 2001)

15.90.020. Definitions.

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

*AMBIENT NOISE LEVEL* means the all-encompassing noise level associated with a given environment, being a composite of sounds from all sources, excluding the alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

*CUMULATIVE PERIOD* means an additive period of time composed of individual time segments that may be continuous or interrupted.

*DECIBEL (dB)* means a unit that denotes the ratio between two quantities which are proportional to power: the number of decibels corresponding to the ratio of 2 amounts of power is 10 times the logarithm to the base 10 of this ratio.

*EMERGENCY MACHINERY, VEHICLE OR WORK* means any machinery, vehicle or work used, employed or performed in an effort to protect, provide or restore safe conditions in the community or for the citizenry, or work by private or public utilities when restoring utility service.

*FIXED NOISE SOURCE* means a stationary device that creates sounds while fixed or motionless, including but not limited to industrial and commercial machinery and equipment, pumps, fans, compressors, generators, air conditioners and refrigeration equipment.

*GRADING* means any excavating or filling of earth material or any combination thereof conducted to prepare a site for construction or other improvements thereon.

*IMPACT NOISE* means the noise produced by the collision of one mass in motion with a second mass that may be either in motion or at rest.

*MOBILE NOISE SOURCE* shall mean any noise source that is not stationary, including but not limited to motorized vehicles, trains, and aircraft.

*NOISE LEVEL* means the "A" weighted sound pressure level in decibels obtained by using a sound level meter at slow response with a reference pressure of 20 micro-newtons per square meter. The unit of measurement shall be designated as dB(A).

*PERSON* means a person, firm, association, co-partnership, joint venture, corporation of any entity, public or private in nature.

*RESIDENTIAL PROPERTY* means a parcel of real property that is developed and used either in part or in whole for residential purposes, other than transient uses such as hotels and motels.

*SIMPLE TONE NOISE* means a noise characterized by a predominant frequency or frequencies so that other frequencies cannot be readily distinguished.



*SOUND PRESSURE LEVEL* of a sound, in decibels, means 20 times the logarithm to the base 10 of the ratio of the pressure of the sound to a reference pressure, which reference pressure shall be explicitly stated.

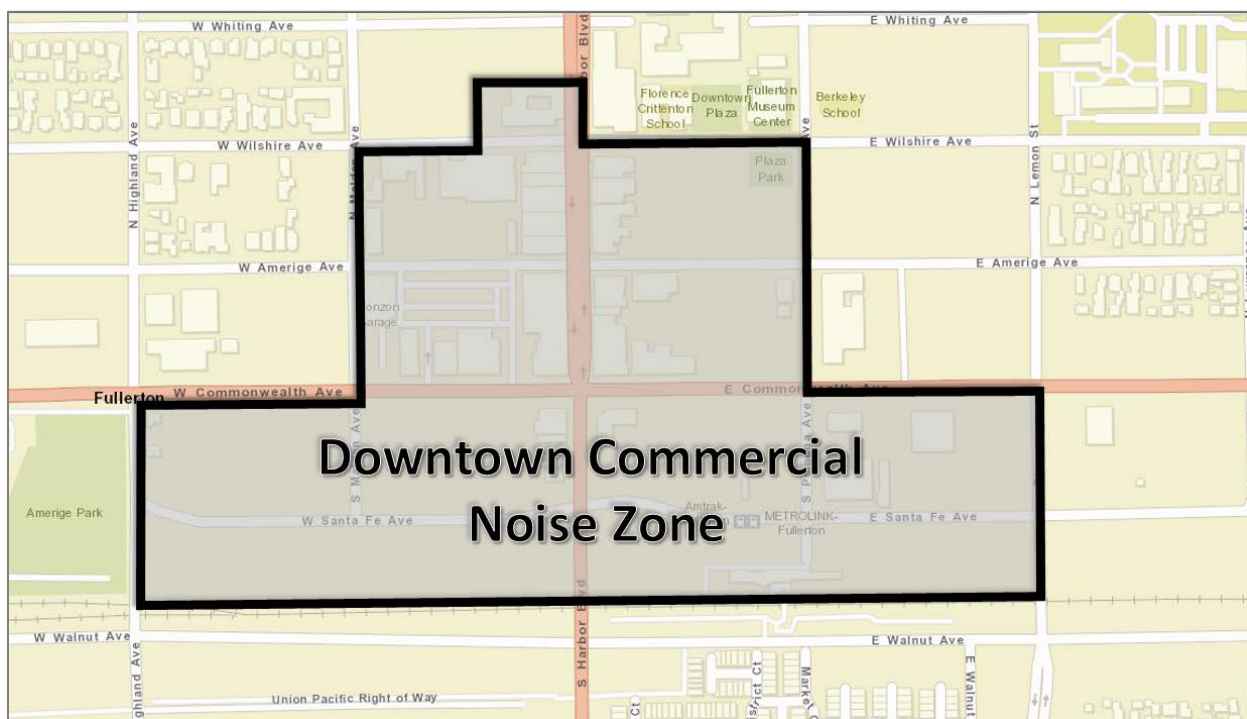
B. A *NOISE ZONE* is defined as an area where a specific set of standards has been established for allowable interior and exterior noise levels.

1. A *RESIDENTIAL NOISE ZONE* includes all properties with a residential zone classification, whether incorporated or unincorporated.

1. A **COMMERCIAL NOISE ZONE** includes all properties with a commercial or public land use zone classification, whether incorporated or unincorporated.

2. **DOWNTOWN COMMERCIAL NOISE ZONE** includes all properties within a specified area of Downtown as depicted in Figure 1.

**Figure 1. Downtown Commercial Noise Zone boundaries**



3. An **INDUSTRIAL NOISE ZONE** includes all properties with an industrial zone classification, whether incorporated or unincorporated.

(Ord. 2982, 2001)

15.90.030. Noise standards.

~~A. The following noise standards, unless otherwise specifically indicated, shall apply to all property within the Residential Noise Zone:~~

Allowable Interior

— Noise Level — Time Period

Not to exceed 55 dB(A) — 7:00 a.m. – 10:00 p.m.

Not to exceed 45 dB(A) — 10:00 p.m. – 7:00 a.m.

Allowable Exterior

— Noise Level — Time Period

Not to exceed 55 dB(A) — 7:00 a.m. – 10:00 p.m.

Not to exceed 50 dB(A) — 10:00 p.m. – 7:00 a.m.

**A. The following noise standards, unless otherwise specifically indicated, shall apply to all property within the Residential Noise Zone:**

<u>Day of the week</u>	<u>Hours</u>	<u>Max dB(A) at affected property (interior)</u>	<u>Max dB(A) at affected property (exterior)</u>
<u>Monday - Sunday</u>	<u>7:00 a.m.-10:00 p.m.</u>	<u>55 dB(A)*</u>	<u>55 dB(A)*</u>
<u>Monday - Sunday</u>	<u>10:00 p.m.-7:00 a.m.</u>	<u>45 dB(A)*</u>	<u>50 dB(A)*</u>

**\* In the event the ambient noise level exceeds the noise limit categories listed, the cumulative period applicable to the category shall be increased to reflect the ambient noise level.**

**B. The following noise standards, unless otherwise specifically indicated, shall apply to all property within the Downtown Commercial Noise Zone:**

<u>Day of the week</u>	<u>Hours</u>	<u>Max dB(A) at affected property (interior)</u>	<u>Max dB(A) at affected property (exterior)</u>
<u>Monday - Thursday</u>	<u>7:00 a.m.-10:00 p.m.</u>	<u>55 dB(A)*</u>	<u>55 dB(A)*</u>
<u>Monday - Thursday</u>	<u>10:00 p.m.-7:00 a.m.</u>	<u>55 dB(A)*</u>	<u>55 dB(A)*</u>
<u>Friday – Sunday</u>	<u>7:00 a.m.-10:00 p.m.</u>	<u>60 dB(A)*</u>	<u>65 dB(A)*</u>
<u>Friday – Sunday**</u>	<u>10:00 p.m. – 1:30 a.m.</u>	<u>65 dB(A)*</u>	<u>70 dB(A)*</u>

**\* In the event the ambient noise level exceeds the noise limit categories listed, the cumulative period applicable to the category shall be increased to reflect the ambient noise level.**

**\*\* Sunday morning after 1:30 a.m. noise standards shall equal the Monday-Thursday standards (10:00 p.m. to 7:00 a.m. standard [60dB(A)]**

**C.** Noise standards for a sensitive use:

1. A "sensitive use" for the purpose of this chapter means any private or public school, hospital, residential care facility for the elderly, and religious institution.

2. It shall be unlawful for any person at any location within the incorporated area of the city to create any noise that causes the noise level at any sensitive use, while the same is in operation to exceed the noise limits as specified for the Residential Noise Zone, notwithstanding the sensitive use may be located outside of the Residential Noise Zone.

C. It shall be unlawful for any person at any location within the incorporated area of the city to create any noise which can be classified as being continuous, reoccurring, predictable, or whose operation of noise-generating capabilities can be stopped or started at a specified time, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the noise level, when measured on the property, either incorporated or unincorporated, to exceed:

1. The noise standard for a cumulative period of more than 30 minutes in any hour;
2. The noise standard plus 5 dB(A) for a cumulative period of more than 15 minutes but less than 30 minutes in any hour;
3. The noise standard plus 10 dB(A) for a cumulative period of more than 5 minutes but less than 15 minutes in any hour;
4. The noise standard plus 15 dB(A) for a cumulative period of more than one minute but less than five minutes in any hour;
5. The noise standard plus 20 dB(A) for a cumulative period of less than one minute in an hour.

**D. The permitted deviations from the noise standards specified in 15.90.030.C shall not be applicable within the Downtown Commercial Noise Zone.**

E. In the event the ambient noise level exceeds any of the five noise limit categories listed in Subsection C, the cumulative period applicable to the category shall be increased to reflect the ambient noise level.

(Ord. 2982, 2001)

15.90.060. Noise level measurement.

- A. The location selected for measuring exterior noise levels shall be at any point on the affected property. The affected property shall be the address from which the complaint was received.
- B. The location selected for measuring interior noise levels shall be made within the affected property at point at least four feet from the wall, ceiling or floor nearest the noise source.
- C. **Any noise level measurements made pursuant to the provisions of this chapter shall be performed using a sound level meter which is commercially available and can make and record sound level readings that include the date and time the reading was taken**

**and the geographic location where the reading was taken to the satisfaction of the Community Development Director.**

~~—C. Any noise level measurements made pursuant to the provisions of this chapter shall be performed using a sound level meter that meets the American National Standard Institute's Standard S1.4—1971 for Type 1 or Type 2 sound level meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.~~

(Ord. 2982, 2001)

15.90.070. Enforcement.

A. The Director of **Community** Development ~~Services~~ **Director** and his duly authorized representatives are directed to enforce the provisions of this chapter.

B. No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this chapter.

(Ord. 2982, 2001)

15.90.080. Appeal.

A. The owner or operator of a noise source who has been cited in violation of the provisions of this chapter may appeal the citation to the City Council. Within 15 **working** days following receipt of ~~a notice of~~ **an** appeal, the City Clerk shall forward to the City Council the recommendation of the **Community** Development ~~Services~~ **Director**, the notice of appeal, and all evidence concerning the appeal received by the Director. In addition, any person may file with the City Council written arguments supporting or attacking the citation. The City Clerk shall mail to the applicant and the complainant a notice of the date set for hearing of the appeal. The notice shall be mailed at least ten days prior to the hearing date.

B. Within 60 days ~~following its~~ **of the** receipt of the ~~notice of the~~ appeal, the City Council shall affirm, modify or reverse the citation. The decision shall be based upon the evaluation by the City Council of the matter. As part of its decision, the City Council may direct the **Community** Development ~~Services~~ **Director** to conduct further proceedings on the appeal. Failure of the City Council to affirm, modify or reverse the citation within the 60-day period shall constitute an affirmation of the citation.

~~(Ord. 2982, 2001)~~

ADOPTED BY THE FULLERTON PLANNING COMMISSION ON FEBRUARY 27, 2019.

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Chris Gaarder, Chair

ATTEST:

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Susana Barrios, Recording Clerk

City of Fullerton  
RESOLUTION CERTIFICATION

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) SS  
CITY OF FULLERTON     )

RESOLUTION NO. PC-2019-02

I, Susana Barrios, Recording Clerk of the Landmarks/Planning Commission of the City of Fullerton, California, hereby certify that the whole number of the members of the Planning Commission of the City of Fullerton is five; and that the above and foregoing Resolution No. PC-2019-02 was adopted at a regular meeting of the Planning Commission held on the 27<sup>th</sup> day of February 2019, by the following vote:

LANDMARKS/PLANNING COMMISSIONER AYES:  
LANDMARKS/PLANNING COMMISSIONER NOES:  
LANDMARKS/PLANNING COMMISSIONER ABSENT:

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Susana Barrios, Recording Clerk

RESOLUTION NO. 2018-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, DECLARING ITS INTENTION TO CONSIDER AMENDMENTS TO THE FULLERTON MUNICIPAL CODE REGARDING DEVELOPMENT AND OPERATIONAL STANDARDS FOR BUSINESSES SELLING ALCOHOL FOR ON-SITE CONSUMPTION

PRJ18-00183 – LRP18-00001  
CITY OF FULLERTON

WHEREAS, Fullerton Municipal Code Chapter 15.72 establishes the process by which amendments to Title 15 are initiated and Section 15.72.020.B provides this authority to the City Council; and

WHEREAS, in 2002 the City Council adopted the Restaurant Overlay District (ROD) which allowed new and expanded restaurant uses to operate in the downtown without providing additional on-site parking; and

WHEREAS, in 2007, the City Council enacted a moratorium on any new or expanded restaurants serving alcohol, and/or live entertainment permits within the ROD to provide time for public safety staff to address the disruptive behavior associated with the increasing concentration of restaurants and bars in the downtown; and

WHEREAS, in 2008 the City Council adopted Ordinances 3113 and 3114 which revised the development and operational standards for downtown restaurants and bars as well as created the Administrative Restaurant Use Permit (ARUP) process; and

WHEREAS, in the decade since the last major update to downtown restaurant regulations, the City has continued to see a strong interest in dining and entertainment business investment, and downtown continues to be a regional destination for dining and nightlife; and

WHEREAS, to ensure that downtown Fullerton continues to be an attractive place for business investment, a source of community pride, and a safe and inviting place for residents, staff has identified a number of provisions in the current Municipal Code pertaining to businesses which sell alcohol for on-site consumption which could be amended or updated to improve the regulatory environment for downtown; and

WHEREAS, the primary goals of this update are to 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

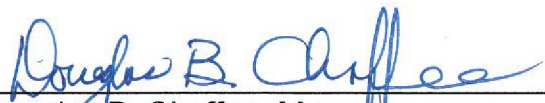
WHEREAS, as part of this update process, the City is proposing to engage in a multi-pronged business and community outreach process to receive feedback on the proposed amendments from the downtown business community.



NOW, THEREFORE, the City Council of the City of Fullerton does hereby resolve as follows:

1. That the City Council declares its intention to consider amendments to Title 15 of Fullerton Municipal Code regarding development and operational standards for businesses selling alcohol for on-site consumption.
2. That there is no possibility that the Resolution of Intention in and of itself will have a significant effect on the environment and therefore this action is not subject to CEQA.

ADOPTED BY THE FULLERTON CITY COUNCIL ON JUNE 5, 2018.

  
\_\_\_\_\_  
Douglas B. Chaffee, Mayor

ATTEST:

  
\_\_\_\_\_  
Lucinda Williams, City Clerk

  
\_\_\_\_\_  
Date

City of Fullerton  
RESOLUTION CERTIFICATION

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE    ) SS  
CITY OF FULLERTON    )

RESOLUTION NO. 2018-31

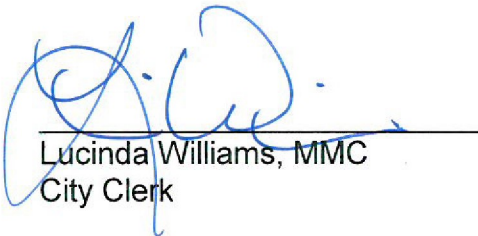
I, Lucinda Williams, City Clerk and ex-officio Clerk of the City Council of the City of Fullerton, California, hereby certify that the whole number of the members of the City Council of the City of Fullerton is five; and that the City Council adopted the above and foregoing Resolution No. 2018-31 at a regular meeting of the City Council held on the June 5, 2018 by the following vote:

COUNCIL MEMBER AYES:                   Chaffee, Sebourn, Fitzgerald, Silva, Whitaker

COUNCIL MEMBER NOES:                 None

COUNCIL MEMBER ABSTAINED:         None

COUNCIL MEMBER ABSENT:             None

  
\_\_\_\_\_  
Lucinda Williams, MMC  
City Clerk



(Reference Only)

**Proposed 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 Permit 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.

- A. 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.
- B. 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.

## (Reference Only)

- 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;

## (Reference Only)

- 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.

(Reference Only)

- 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.

## (Reference Only)

### 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.

## (Reference Only)

### 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.

## (Reference Only)

- 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:

## (Reference Only)

- 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.
- C. 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.
1. No Entertainment of any kind shall be permitted after 10:00 P.M.;
  2. No outdoor queuing shall be permitted after 10:00 P.M.;
  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.

### 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:

1. Violated any provision of this Chapter;
2. Violated conditions of the Entertainment Permit;
3. 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;



(Reference Only)

4. Made any false, misleading, or fraudulent statements in the application; or
5. Been convicted of a felony or misdemeanor involving dishonesty, fraud, or deceit.

B. 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 the 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.

## **Existing Chapter 3.08 LIVE ENTERTAINMENT**

### **Sections:**

- 3.08.010 Definitions.
- 3.08.020 Permit required.
- 3.08.030 Exemptions.
- 3.08.040 Live entertainment -- Application for permit -- Fees.
- 3.08.050 Live entertainment -- Application -- Contents.
- 3.08.060 Live entertainment -- Application -- Investigation.
- 3.08.070 Live entertainment -- Permit refusal -- Appeal.
- 3.08.080 Appeal procedure.
- 3.08.090 Appeal hearing.
- 3.08.100 Permit renewal.
- 3.08.110 Permit suspension and revocation.
- 3.08.120 Permits nontransferable.
- 3.08.130 Existing live entertainment permits -- Validity.
- 3.08.140 Exhibiting permits and identification.
- 3.08.150 Prohibited conduct.
- 3.08.160 Violation -- Penalty.
- 3.08.170 Severability.

### **3.08.010 Definitions.**

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

- A. "Amateur" means any person who has never been an entertainer for financial benefit.
- B. "Audience" means one or more persons, present as listeners or viewers, but not as entertainers, during any live entertainment.
- C. "Audition" means any test of the quality of live entertainment not in the presence of a public audience.
- D. "Entertainer" means any person whose actions or presence before an audience provides live entertainment, but neither a vocalist nor a cafe musician, as defined in Section 37101.5 of the Government Code of California, shall be deemed to be an entertainer under the provisions of this chapter while occupied exclusively in singing or presenting music.
- E. "Live entertainment" means any exhibition, demonstration or display upon, or by, any person, or any sound, word, speech, song or other utterance, or any dance, posture, act or other movement, or any music or other sound manually produced from any instrument or article, by any person, in the presence of any audience, which agreeably occupies the mind, or pleasantly attracts, diverts or holds the attention, or is for the amusement, of any person in such audience. (Ord. 2894 § 2 (part), 1996).

### **3.08.020 Permit required.**

It shall be unlawful for any person to provide in, or upon, any premises within the City, live entertainment in exchange for anything of value without a permit issued by the City pursuant to the provisions of this chapter. (Ord. 2894 § 2 (part), 1996).

### **3.08.030 Exemptions.**

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

- A. Any live entertainment consisting solely of auditions;
- B. Any amateur who sings while in, and a part of, any audience;
- C. Any live entertainment provided in, and with the consent of any person in control of, any park, stadium, arena, circus, fairground, auditorium or upon any educational, governmental or military property;
- D. Any live entertainment provided in any theater not a part of, or having any entrance in common with, any restaurant;
- E. Any live 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 nonprofit 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 nonprofit private club or group;
- F. Anything emanating from a radio, record player, jukebox or television receiver;
- G. Any vocalist and any cafe musician, as defined by Section 37101.5 of the Government Code of California, while occupied exclusively in singing or presenting music;
- H. Any professional comedian or comic who tells jokes, acts out comical situations, or engages in repartee, which is designed, or intended to divert, amuse, or attract the attention of persons observing such presentation or activities. (Ord. 2894 § 2 (part), 1996).

### **3.08.040 Live entertainment -- Application for permit -- Fees.**

A. Any person desiring to obtain a permit to provide live entertainment shall make application to the Chief of Police or his designated representative. Prior to submitting such application, a nonrefundable fee as established by resolution of the City Council shall be paid to the City Treasurer of the City to defray the cost of investigation and report required by this chapter. The City Treasurer shall issue a receipt showing that such application fee has been paid. The receipt, or a copy thereof, shall be supplied to the Chief of Police at the time such application is submitted.

B. The application for a permit does not authorize the performing of live entertainment until such permit has been granted. (Ord. 2894 § 2 (part), 1996).

### **3.08.050 Live entertainment -- Application -- Contents.**

Each applicant for a live entertainment permit shall furnish the following information:

- A. The full true name and any other names used by the applicant;
- B. The present address and telephone number of the applicant;
- C. The previous addresses of applicant, if any, for a period of five years immediately prior to the date of the application and the dates of residence for each address;
- D. Acceptable written proof that the applicant is at least 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 twenty-one years of age;
- E. The applicant's height, weight, color of eyes and hair and date and place of birth;
- F. Two photographs of the applicant at least two inches by two inches taken within the last six months;

- G. Name, address and telephone number of the location where the live entertainment is to be provided;
- H. Business, occupation or employment history of the applicant for the five years immediately preceding the date of application;
- I. All convictions, including ordinance violations, exclusive of traffic violations, stating the dates and places of any such conviction;
- J. The Chief of Police shall require the applicant to furnish fingerprints;
- K. Such other identification and information as the Police Department may require in order to discover the truth of the matters required to be set forth in this application. (Ord. 2894 § 2 (part), 1996).

### **3.08.060 Live entertainment -- Application -- Investigation.**

Upon receipt of the completed application, the Chief of Police, or his designee, shall have ten days to investigate the application and the background of the applicant, including, but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency. Upon completion of the investigation, the Chief of Police shall grant the permit if he finds:

- A. The required fee has been paid.
- B. The applicant conforms in all respects to Section 3.08.050 of this chapter.
- C. The applicant has not knowingly made any false, misleading or fraudulent statements in the application.
- D. The applicant has fully cooperated in the investigation of his or her application.
- E. 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.
- F. 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.
- G. The applicant has not engaged in conduct which would constitute grounds for suspension or revocation under this chapter.

In the event the Department of Justice State summary criminal history information is not received within the ten-day investigation period, the Chief of Police is authorized to issue a live entertainment permit. A final decision granting or denying a permit shall be made after receipt of such summary criminal history information. If the permit is granted, the live entertainment permit shall remain valid from the date of issuance to the date of expiration. If the permit is denied, the issued permit shall expire upon notice of denial. (Ord. 2894 § 2 (part), 1996).

### **3.08.070 Live entertainment -- Permit refusal -- Appeal.**

If the Chief of Police, following investigation of the applicant, finds that the applicant does not fulfill the requirements set forth in this chapter, the Chief of Police shall deny the application and notify the applicant by first-class mail of such denial. Any applicant who is denied a permit by the Chief of Police may appeal such denial to the City Manager, pursuant to the provisions of this chapter. (Ord. 2894 § 2 (part), 1996).

### **3.08.080 Appeal procedure.**

- A. The permittee shall file a written appeal with the City Clerk within fifteen days of the date of mailing of the notice of denial, suspension or revocation.
- B. The City Manager, or his designee, shall schedule a hearing to be held within fifteen days after the filing of the appeal.

C. Notice of the date, time and place of the hearing shall be mailed, postage prepaid, at least ten days prior thereto, to the applicant at the address given in the appeal or, if none is provided, to the address set forth in the permit application.

D. The City Manager, or his designee, in his sole discretion, may grant or deny a continuance, may dissolve stays of pending orders of denial, suspension or revocation; and may appoint outside Hearing Officers.

E. The City Manager, or his designee, shall determine, after consideration of all evidence presented, whether a permit should be issued, reinstated, suspended or revoked. The decision of the City Manager, or his designee, shall be final. (Ord. 2894 § 2 (part), 1996).

### **3.08.090 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. (Ord. 2894 § 2 (part), 1996).

### **3.08.100 Permit renewal.**

Permits for live entertainment shall be renewed on an annual basis provided the permittee continues to meet the requirements as stated in this chapter. The renewal fee for a live entertainment permit shall be set by resolution of the City Council. The permittee shall submit an application for permit renewal which shall contain the same information as required under this chapter for the original application. A nonrefundable fee as established by resolution of the City Council shall be paid to the City Treasurer of the City to defray the cost of investigation and report required by this chapter. The City Treasurer shall issue a receipt showing that such renewal fee has been paid. The receipt, or a copy thereof, shall be supplied to the Chief of Police at the time such application is submitted. (Ord. 2894 § 2 (part), 1996).

### **3.08.110 Permit suspension and revocation.**

The Chief of Police, or his designee, may suspend or revoke a permit if a permittee has:

- A. Knowingly made any false, misleading, or fraudulent statements in the applications; or
- B. Violated any provision of this chapter; or
- C. Been convicted of a felony or misdemeanor involving dishonesty, fraud, or deceit.

The permittee shall be provided with written notice by first class mail, postage prepaid, of such suspension or revocation. The permittee may file an appeal with the City Clerk within fifteen days of the date of mailing of the notice of denial, suspension or revocation. In the event an appeal is timely filed, the suspension or revocation shall not take effect until final decision has been rendered by the City Manager, or his designee. If no appeal is filed, the suspension or revocation shall become effective upon expiration of the period for filing appeals. (Ord. 2894 § 2 (part), 1996).

### **3.08.120 Permits nontransferable.**

No live 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. (Ord. 2894 § 2 (part), 1996).

### **3.08.130 Existing live entertainment permits -- Validity.**

All persons holding existing live entertainment permits have until the date of expiration of that permit to comply with all requirements of this chapter. (Ord. 2894 § 2 (part), 1996).

### **3.08.140 Exhibiting permits and identification.**

No permittee shall fail to exhibit upon demand to any Fullerton police officer any permit issued to such permittee pursuant to this chapter and evidence reasonably sufficient to identify such permittee. (Ord. 2894 § 2 (part), 1996).

### **3.08.150 Prohibited conduct.**

A. A permittee shall not violate the provisions of Section 647(a) or 647(b) of the California Penal Code, or any other state law while providing live entertainment.

B. A permittee shall not have any intentional physical contact with any patron while providing live entertainment. (Ord. 2894 § 2 (part), 1996).

### **3.08.160 Violation -- Penalty.**

Any person violating any section of this chapter shall be guilty of a misdemeanor. (Ord. 2894 § 2 (part), 1996).

### **3.08.170 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. (Ord. 2894 § 2 (part), 1996).

**Existing Chapter 15.30.040(H)**  
**LIMITATION ON PERMITTED USES**

**15.30.040. Limitations on permitted uses.**

H. Businesses selling alcohol for consumption on the premises (On-Sale Establishment) in any zone, including Specific Plan areas, are required to obtain an ARUP.

1. In addition to the land use regulations specified by the Zoning Code, the following uses in the Transportation Center Specific Plan, CBD and C-3 zone shall require a conditional use permit (CUP), and shall be subject to additional requirements as more fully set forth below:

- a. Bars or cocktail lounges;
- b. Reception halls, banquet facilities, dance halls, or related uses.
- c. Establishments that allow or permit a dance floor(s), whether temporary or permanent, where food or beverages are served, and which are open to the public.

2. In addition to the land use regulations specified by the Zoning Code, the following uses in the Fullerton Transportation Center Specific Plan, CBD and C-3 zone shall require an administrative restaurant use permit (ARUP), pursuant to Chapter 15.71 of this Code, subject to additional requirements as more fully set forth below:

3. Required findings for bars, cocktail lounges, night clubs and dance halls.

a. In order to approve a use permit for the establishment of any bar, cocktail lounge, night club, or dance hall, the Planning Commission shall make the following findings, in addition to those required for granting any conditional use permit:

- i. The proposed use is consistent with the purpose and intent of this section;
- ii. Establishment, maintenance or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons visiting, residing or working in the neighborhood or injurious to property or improvements in the area.

b. In making findings required by this section, the Planning Commission shall consider the following:

- i. Whether the use serves public convenience and necessity;
- ii. The crime rate in the area as compared to other areas in the City;
- iii. The number of alcohol licenses per capita as compared to the county-wide average.

4. An application for an Administrative Restaurant Use Permit (ARUP) or an amendment to an ARUP shall comply with the requirements of Chapter 15.71. An application for a Conditional Use Permit (CUP) for any bar, cocktail lounge, night club, reception hall, dance hall or restaurant use requiring a CUP shall comply with the requirements of Chapter 15.70, and shall provide any additional materials from Section 15.71.020 as may reasonably be required in the discretion of the Community Development Director.

5. All establishments selling alcohol for on-site consumption shall comply with the standards set forth in this Chapter and the Fullerton Transportation Center Specific Plan, as set forth in the

City's Central Business District Design Guidelines and any applicable provisions of the Outdoor Dining Guidelines, as they may be amended from time to time by the City Council. In addition to those requirements, the following design and development standards shall be complied with for any new businesses selling alcohol for on-site consumptions, any existing legal non-conforming business that makes major changes in operational characteristics as specified in Section 15.30.040.I.8.a, and any business determined to be a nuisance business as specified in Section 15.30.040.I.10:

a. Outdoor Lighting.

i. All outdoor areas (including any private areas) shall have lighting with a minimum illumination level of two (2) foot-candles for security and safety purposes, with a maximum to minimum ratio no greater than 6:1. Vertical illumination 5 feet above the ground shall be at least equal to the horizontal illumination at ground level. The pole-mounted and wall-mounted luminaries shall be installed between 10 feet and 12 feet high from the finished surface. The lighting system shall be designed to minimize light trespass to streets and adjoining properties, and shall include integral shielding and selective fixture placement to restrict unwanted light and nuisance glare.

ii. Decorative lights with individual light sources emitting 300 lumens or less and temporarily installed between November 1 and January 15 of the next year are exempt from this requirement.

b. Indoor Lighting.

i. Indoor lighting shall be no less than one-half (.5) foot candles throughout the customer areas of the establishment, except that no less than 1.25 foot candles shall be minimally maintained and evenly distributed at ground level in all dancing areas. Lighting level shall be measured at six (6) feet above finished floor.

ii. Indoor lighting may not be turned off or reduced so that the intensity of the lighting on a dance floor makes it difficult to clearly see or identify individuals dancing;

iii. If visible from a public street, highway or other public thoroughfare used for vehicular traffic, no stationary interior electric lighting or illumination system may be constructed or maintained which is, contains or utilizes:

(a) An exposed incandescent lamp with a rated wattage in excess of 40 watts or 480 lumen.

(b) An exposed incandescent lamp with an internal metallic reflector.

(c) An exposed incandescent lamp with an external reflector.

(d) A revolving beacon light.

(e) A continuous or sequential flashing operation in which more than one-third of the lights are turned on or off at one time.

(f) An illuminating device or devices which produce illumination in excess of what is permitted in Section 21466.5 of the State of California Vehicle Code.

c. An acoustical report and/or statement of no-impact shall be submitted to the Director of Community Development by any business wishing to provide amplified music and/or live entertainment. Restaurant music that does not impede normal conversation of the restaurant's



diners (i.e., background music), acoustic performances comprised of two or less members, and special events as defined by Municipal Code Chapter 15.58, shall be exempt. All music and live entertainment, whether inside or outside, shall be at a level that does not impede or negatively impact adjacent businesses, as determined by the Director. The Director may require the preparation of an acoustical analysis by an acoustic engineer to identify appropriate mitigation measures. The Director shall require mitigation as necessary, and shall consider the City's General Plan Noise Element, State guidelines, Building Code criteria and industry standards when making his determination. The Director may defer his approval to the Planning Commission, and any decision may be appealed pursuant to Section 15.71.040.

d. Utilities. All utility services on the site shall be installed underground, pursuant to Fullerton Municipal Code Chapter 16.05.

e. Supply Storage. All facilities for storage of supplies shall be located within a building.

f. Refuse Storage/Disposal. Any refuse storage area located outside of a completely enclosed building shall be surrounded by a solid wall six (6) feet in height with self-locking gates, per city standard plans. All refuse storage and disposal shall comply with NPDES requirements, as well as with any local, county, state or federal requirement relating to storage, disposal, dispersal or recycling of refuse materials of any kind.

g. Preventative Design. The site plan and floor plan of all businesses shall be reviewed for opportunities to incorporate design features to assist in reducing alcohol-related problems. The Planning Commission, or the Director of Community Development or his/her designee, as the case may be, may condition the alcoholic beverage outlet to incorporate preventive design features. Such features may include, but are not limited to, openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

h. Queuing areas. All establishments shall provide an interior queuing or waiting area, separate from customer service areas.

i. Washing/cleaning facilities shall comply with the pertinent sections of the California Health and Safety Code and any applicable provisions of Chapter 12.20 of this code, and shall also include a hand lavatory in each food preparation and packaging area for employees.

j. The Director of Community Development or his/her designee or the Planning Commission, as the case may be, shall have the right to add additional conditions of approval in order to ensure compatibility of the development with the surrounding area and the goals and objectives of the General Plan of the City. The Director of Community Development or his/her designee or the Planning Commission, as the case may be, shall retain jurisdiction to impose additional conditions after approval if necessary or appropriate to ensure that operation of the establishment is consistent with the findings made at the time of approval.

k. Modifications or waivers of the design and development standards contained in this subsection, Section 15.30.040.I.5, may be granted by the Director of Community Development or his/her designee or the Planning Commission, as the case may be, if strict compliance with the standards is not necessary to achieve the purpose and intent of the standard with respect to a particular business or premises.

6. Operational requirements shall apply to all new businesses selling alcohol for on-site consumption, any existing legal non-conforming business that makes major changes in

operational characteristics as specified in Section 15.30.040.I.8.a, and any business determined to be a nuisance business as specified in Section 15.30.040.I.10.

a. The following operational requirements are standard conditions of operation.

i. Neither the business, nor anyone on its behalf, shall share any profits, or pay any percentage or commission to a promoter or any other person, based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders, or the sale of drinks, or rent out or otherwise receive compensation for use of the facilities, except if the permittee or its representative or agent will be present during the time the premises is rented and is at all such times responsible and in charge of all activities on the premises.

ii. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed at the business after 7:00 p.m.

iii. For establishments with live entertainment 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.

iv. Interior noise from the establishment shall not exceed a level which can be heard 50 feet from any exterior wall of the establishment, or heard 50 feet from the boundary of any outside courtyard or patio area included within the limits of the lot or designated tenant area on which the business is located, for a period of longer than five consecutive seconds.

v. Food and/or alcohol shall not be served in interior queuing or waiting areas.

vi. If the interior queuing or waiting area is insufficient to fully accommodate waiting customers, a maximum of 25 patrons shall be permitted to queue outside the business. Outside queuing space shall be located so as not to obstruct public right-of-way, interfere with any outside eating areas, or impede access to adjacent business establishments. Patrons in the outside queuing area shall not be permitted to obtain or consume food or beverages from the business.

vii. The business, or anyone on its behalf, shall not require the purchase of a minimum number of drinks.

viii. For restaurant uses, the quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sale of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the City upon request by the Director of Community Development. Any establishment that is approved to operate as a bar, tavern, cocktail lounge or night club after restaurant hours shall maintain separate records of after hour sales.

ix. For restaurant uses, at all times the premises or any portion thereof is open to the public and operated as a restaurant, food from the regular menu shall be provided to patrons an hour or less before closing.

x. For restaurant uses, the business, or anyone on its behalf, shall not require an admission charge or a cover charge.

b. Modifications or waivers of the operational standards contained in Section 15.30.040.I.6.a may be granted by the Planning Commission, subject to conditional use permit approval, and any conditions necessary to preserve the public health, safety and welfare.

c. Reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the business and adjacent properties must be taken during business hours if directly related to the patrons of the subject business. "Reasonable steps" shall include calling the police in a timely manner; preventive design features (Section 15.30.040.I.6(a)); and requesting those engaging in such activities to cease the activity, unless personal safety would be threatened in making that request.

d. Pursuant to Chapters 15.70 and 15.71 of this title, the Planning Commission, or the Director of Community Development or his/her designee, as the case may be, may restrict the hours of operation of the business.

e. Except as expressly provided herein or through a modified condition following a public hearing, any business that provides on-site alcoholic beverages for sale after 10:00 p.m. shall employ or otherwise provide private security personnel or officers to patrol the premises of such business establishment during hours of operation in the manner and number required in this section. Such provisions shall include:

i. The number of and the hours during which private security officers shall be provided by the business shall be set by the Director of Community Development or his/her designee based upon the recommendation of the Police Department, which shall be based upon the following factors:

- (a) Type of ABC license approved or proposed for the business;
- (b) Gross square footage of business premises;
- (c) Occupancy approved by the Building Division and Fire Department, as well as observed occupancy;
- (d) History of incidents on or immediately adjacent to the premises;
- (e) A requested activity requiring a CUP;
- (f) Hours of operation of the business; and
- (g) Actual operating conditions or a business plan outlining proposed operations.

ii. The Director of Community Development or his/her designee, taking into account any recommendation by the Police Department, may alter the number of security personnel required at any time, with reasonable written notice, based upon changes to the factors of subsection (i.) or other observed or noticed conditions at the premises, including specific days, times, or occasions necessitating additional security, such as temporary uses, special events or functions, holidays (both observed and celebrated in the United States and/or by other nations, such as Cinco de Mayo, St. Patrick's Day, Bastille Day, etc.).

iii. The minimum number of required security officers shall be equal to the number of public entrances/exits to the business establishment, including any permitted patio exits;

iv. The minimum hours during which security officers shall be required shall be from 9 p.m. to 2 a.m. or closing, if closing is earlier than 2 a.m.

v. Private security personnel or officers may be employees of the business establishment, except when the Director of Community Development or his/her designee has required that such personnel or officers be provided by an independent security company;

vi. The business establishment owner shall be responsible for ensuring that the business' security personnel or officers implement and enforce at all times any security plan approved or required for the business;

vii. All private security personnel or officers shall be currently trained, licensed and bonded according to the requirements of California laws, including, but not limited to, the requirements of California Business & Professions Code section 7580, et seq., and California Code of Regulations section 600, et seq.;

viii. All private security personnel or officers shall wear a uniform. Each business establishment shall have a standard uniform, which shall be authorized by the Chief of Police or his designee. The uniform shall clearly identify the person as security, and shall identify the name of the business;

ix. The business establishment owner shall have the responsibility for ensuring that its required private security personnel or officers shall at all times while on duty be able to communicate with other required security officers for that business establishment;

x. Each private security personnel or officer providing services required by this section shall, prior to commencing any provision of security services, attend a "Downtown Business Orientation" to be conducted by the Fullerton Police and Fire Departments.

xi. Security devices, including video surveillance and recording equipment may also be required of any business within the C-3 zone that provides on-site alcoholic beverages for sale, as may be specified by the Director of Community Development or his/her designee and taking into account any recommendations by the Police Department. Any business which is required to or does maintain video surveillance and/or recording equipment shall maintain the video recordings for a minimum period of thirty (30) days.

The requirements of this section may be waived for a business that has been in operation for at least one year, based upon the Director of Community Development or his/her designee's reasonable discretion regarding the manner in which the business has been operated in the past, including compliance with other applicable city requirements. Any waiver may be revoked, upon reasonable written notice to the business, in which case the business shall thereafter be required to comply with all of the provisions of this section no later than the date specified in the notice.

f. The exterior of the business, including all signs and accessory buildings and structures, shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter and debris (including vomit, urine and excrement) from the premises and on all abutting sidewalks and parking lots within twenty (20) feet of the premises. Graffiti shall be removed within forty-eight (48) hours of written notice from the City.

g. Responsible Beverage Service/Sales Training Requirements.

i. All owners, managers and employees serving and/or selling alcoholic beverages in an establishment shall undergo and successfully complete a certified training program in responsible methods and skills for

serving and selling alcoholic beverages.

ii. Responsible beverage service and sales training shall be required for all new alcoholic beverage outlets and for any existing alcoholic beverage outlet upon a finding of the Planning Commission, or the Director of Community Development or his/her designee, as the case may be, that the establishment is operated or maintained under objectionable conditions that constitute a public nuisance.

iii. To qualify to meet the requirements of this section a certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service (CCC/RBS) or other certifying/licensing body which the State may designate.

iv. New alcoholic beverage establishments shall comply with the requirements of this section within ninety (90) consecutive days of the issuance of the certificate of occupancy or business license. Existing alcoholic beverage establishments shall comply with the requirements of this section within ninety (90) days of the effective date of the use permit.

v. Records of each owner's, manager's and employee's successful completion of the certified training program required by this section shall be maintained on the premises of the alcoholic beverage outlet and shall be presented upon request by a representative of the City of Fullerton.

vi. The Planning Commission, or the Director of Community Development or his/her designee, as the case may be, may waive or modify all or part of the requirements of this section upon finding that the employees of the alcoholic beverage outlet are sufficiently knowledgeable in the responsible methods and skills for serving and selling alcoholic beverage training.

#### 7. Accessory Outdoor Dining or Patio.

a. Notwithstanding any other provisions of this Chapter, the Director of Community Development or his/her designee may approve an application to add or expand on-site outdoor dining to an existing eating and drinking establishment provided the area devoted to outdoor dining does not exceed twenty-five percent (25%) of the existing interior net public area of the establishment, or one thousand (1,000) square feet, whichever is less, and is accessory to any indoor dining, except no such additional or expansion shall be permitted by the Director which is accessory to a bar area. A request for an outdoor patio 100 square feet or less in size shall be administratively reviewed by the Director as an ARUP; patios greater than 100 square feet shall require an ARUP with a public hearing, pursuant to Chapter 15.71.

b. Before approving an application for outdoor dining or patio, the Director of Community Development or his/her designee shall make the following findings:

i. The proposed outdoor dining or patio is accessory to the establishment.

ii. The establishment, maintenance or operation of the accessory outdoor dining or patio will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing, visiting, or working in the neighborhood or injurious to property or improvements in the area.

iii. The proposed accessory outdoor dining or patio will not be located so as to result in a reduction of existing parking spaces, or interfere with public easements.

c. The Director of Community Development or his/her designee's approval of an application to add or expand outdoor accessory dining or patio shall be subject to the following standard conditions:

i. That the outdoor dining or patio shall be subject to all the existing hours of operation, operational characteristics and conditions of any use permit applicable to the establishment except as otherwise set forth herein.

ii. No amplified music or amplified entertainment is permitted outdoors, except recorded background music for dining establishments wherein normal conversation is not impeded; no music or entertainment shall be permitted on a patio past 10:00 p.m. Sunday through Thursday, and 11:00 p.m. Friday and Saturday.

iii. All doors and windows leading to the outdoor dining or patio shall remain closed while any approved indoor amplified music or live entertainment is in operation.

iv. Roof coverings shall not have the effect of creating a permanent enclosure; and fences, walls or similar barriers shall serve only to define the dining area and not constitute a permanent all weather enclosure.

v. For bars, taverns, cocktail lounges and night clubs only, there shall be no access directly to the patio area from any outdoor area, and the patio area shall be surrounded by a six foot high, non-view obscuring barrier with openings not to exceed two inches in height or width. Exiting only shall be permitted from the patio area as required by the Building Code.

vi. Such additional conditions the Director of Community Development or his/her designee deems necessary or appropriate to ensure operation of the outdoor dining or patio is consistent with the findings made at the time of approval.

d. Deviations from the standard conditions contained within Section 15.30.040.1.7.c may be considered by the Planning Commission pursuant to a Conditional Use Permit, Chapter 15.70.

e. An application to add outdoor dining or patio may be denied should the Director of Community Development or his/her designee determine there is a potential for an impact on the public's health, safety and welfare, and approval of an application may be revoked or modified by the Director of Community Development or his/her designee in accordance with the procedures set forth in Section 15.71.060 of this Code, upon a finding of the failure to comply with the conditions in this section or any other applicable conditions and regulations.

f. In the event that a proposed outdoor dining area is to be located on a public sidewalk or right-of-way, the application shall not become effective until the applicant has obtained a valid encroachment permit pursuant to the Outdoor Dining Guidelines established by the City Council.

g. Operation of any added or expanded outdoor accessory dining or patio approved pursuant to this subsection, 15.30.040.1.7, shall be operated pursuant to the City's Outdoor Dining Guidelines and any and all permit conditions required by the approving agent or body.

#### 8. Changes in Operational Characteristics.

a. Major Changes. A use permit or an amendment to a use permit shall be required for any major change in the operational characteristics of any existing eating and drinking establishment, including those originally requiring a use permit under the provisions of this Chapter, and those legally in existence at the time of adoption of this section. For purposes of this chapter, a major change in operational characteristics shall include, without limitation, any of the following:

i. Any increase in the hours of operation;

ii. The introduction of live entertainment consisting of three or more individuals, or live entertainment performing with amplified sound, or a significant change in the character of the live entertainment;

iii. The introduction of dancing or a dance floor;

iv. The introduction of the sale of alcoholic beverages;

v. Change in the type of alcohol license required by the State of California, including but not limited to a change from "beer and wine only" to "full alcohol" sales, or the addition of another alcohol license;

vi. An increase in the gross floor area, net public area or the size of the area principally devoted to the sale of alcoholic beverages in excess of one hundred (100) square feet;

vii. The increase in the number of seats of a bar or cocktail lounge by more than fifteen (15) percent (for purposes of this section, each twenty four (24) linear inches of a bar, counter or similar serving area shall constitute a seat);

viii. A loss of on-site or off-site parking spaces for a period of ninety (90) days or more, which would reduce available parking below the number then required by the provisions of this Code or the use permit applicable to the establishment, for businesses located outside the ROD;

ix. The introduction of valet parking;

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

xi. Any change that would materially affect a condition of approval.

b. Minor Changes. The Director of Community Development or his/her designee may approve minor changes in the operational characteristics of any eating and drinking establishment; provided, the use permit, if any, for the establishment has not been approved or amended within the past ninety (90) days. For purposes of this chapter, a minor change in operational characteristics shall be any change which does not constitute, either individually or cumulatively, a major change in operational characteristics as defined in Section 15.30.040.I.10(a), and shall include, without limitation, any of the following:

i. The introduction of live entertainment consisting of no more than two individuals; provided, the live entertainment is performed without amplified sound;

ii. An increase in the gross floor area or net public area of up to one hundred (100) square feet;

iii. Outside of the ROD, a loss of on-site or off-site parking spaces for a period of less than ninety (90) days which would reduce available parking below the number then required by the provisions of this code or the use permit applicable to the establishment;

iv. The increase in the number of seats of a bar or cocktail lounge by not more than fifteen (15) percent (for purposes of this section, each twenty four (24) linear inches of a bar, counter or similar serving area shall be considered to constitute a seat).

c. The applicant shall obtain all required City permits prior to implementing any approved major or minor change in operational characteristics pertaining to entertainment, dancing, pool tables or amusement devices (Chapter 3.08, 3.48, and 3.54).

9. Nonconforming Structures and Uses. Except as provided in Section 15.64.040, the provisions of Section 15.30.040.I shall be applicable to all eating and drinking establishments in the Fullerton Transportation Center Specific Plan and the C-3 zones. In the event of any conflict between the provisions of this chapter and the provisions of Chapter 15.64, the provisions of this chapter shall control. Maintenance, repairs and structural alterations shall be subject to the provisions of Chapter 15.64.

10. Nuisance Businesses. Any business which sells alcoholic beverages for on-site consumption in the

C-3 zones of the City, whether or not it has a CUP, ARUP or was opened without any city use permits required, will be considered a nuisance business if the Planning Commission or City Council determines that the business has been operated in such a fashion as to cause an undue burden 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.

a. The following conditions shall trigger the scheduling of a public hearing to determine whether a particular business is a nuisance:

i. Issuance of three (3) notices of violation or citations within a twelve (12) month period, either administrative, criminal, or both, from the Fire Marshal, the Building Official, Community Preservation officers, and/or the Police Department.

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

iii. Five (5) documented instances within a twelve (12) month period of behavior detrimental to the public health, welfare, safety, peace, comfort or general welfare of persons residing, visiting, or working in the neighborhood or injurious to property or improvements in the area.

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

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 may not be used as a basis for concluding that a business is operating as a nuisance.

b. The Planning Commission or City Council shall conduct a public hearing in order to determine whether there is sufficient evidence to establish findings 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.

c. 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. If a timely appeal of a Planning Commission determination is filed, 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.



d. If the City Manager determines that an emergency situation exists which requires immediate action, then the determination of whether a business constitutes a nuisance business shall be made by the City Council in the first instance, but following notice and a public hearing as otherwise set forth herein.

e. If a business is declared a nuisance business, the Planning Commission or City Council, as the case may be, may revoke or further condition any CUP or ARUP which has been issued to the business. If the business opened without obtaining a CUP or ARUP, but has been 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.

11. Revocation. The Planning Commission, or the Director of Community Development or his/her designee, as the case may be, may revoke a CUP or an ARUP, or any similar use permit for an alcoholic beverage outlet, following the procedures set forth in Chapter 15.70 or 15.71, as the case may be, except as follows:

a. Revocation shall be based on one or more of the following findings:

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

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

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

iv. Noise from the establishment for which the permit was issued violates the City's Noise Ordinance (Chapter 15.90 of the Municipal Code) or other applicable criteria, such as noise regulations contained in the Fullerton Transportation Center Specific Plan;

v. 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;

vi. There is a violation of or failure to maintain a valid ABC license;

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

12. Discontinuance. Any use permit for a business selling alcoholic beverages for on-site consumption may be summarily revoked following a hearing thereon if the use is discontinued for ninety (90) 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) days. For use permits granted by the Community Development Director in the first instance, the matter shall be heard by the Community Development Director. For use permits granted by the Planning Commission or the City Council in the first instance, the matter shall be heard by the Planning Commission. This section shall supersede Section 15.70.050.B. for use permits involving a business selling alcoholic beverages for on-site consumption in the C-3 zones or the Fullerton Transportation Center Specific Plan.

13. Enforcement. Any person, whether as principal, agent, or employee, violating the terms of this Zoning Code may be prosecuted by the following alternate, separate and distinct methods. Each method set forth herein is intended to be mutually exclusive and does not prevent concurrent or consecutive methods being used to achieve compliance against continuing violations. Each and every day any such violations exist constitutes a separate offense:

a. Criminal citation. For the purposes of this Zoning Code, a violation of the terms of this Zoning Code may be cited as either an infraction or misdemeanor pursuant to California Government Code Sections 36900 and 36901.

b. Civil action. The city attorney may, at the request of the Director of Community Development, institute an action in any court of competent jurisdiction to restrain, enjoin, or abate the condition(s) or activity(ies) found to be in violation of the provisions of this Zoning Code.

c. Administrative citations pursuant to Chapter 1.10 et seq. of this Code.

d. Any other remedy or right provided by law to the City.

e. Any administrative citation issued pursuant to Chapter 1.10 et seq. of this Code for a violation of this code or the conditions of any CUP or ARUP issued to any business selling alcoholic beverages for on-site consumption during the following periods shall result in imposition of treble fines: from midnight of December 31st through 11:59 p.m. on January 1st, from midnight on July 3 through 8:00 a.m. on July 6th, from midnight on May 5th through 8:00 a.m. on May 6th, and from midnight on March 17 through 8:00 a.m. on March 18.

(Ord. 3232 (part), 2016; Ord. 3195 § 3, 2013; Ord. 3160 § 2, 2010; Ord. 3113, (part), 2008; Ord. 3066, (part), 2005; Ord. 3026, 2003; Ord. 2982, 2001).

## **Existing Chapter 15.71 ADMINISTRATIVE RESTAURANT USE PERMITS**

Sections:

15.71.010. Intent and purpose.

15.71.020. Application.

15.71.030. Public notification and determination.

15.71.040. Appeals.

15.71.050. Expiration.

15.71.060. Revocation.

### **15.71.010. Intent and Purpose.**

A. Restaurants, as defined in Chapter 15.04, wishing to sell alcohol for consumption on the premises pursuant to a liquor sales license issued by the State Department of Alcoholic Beverage Control (ABC) must obtain an Administrative Restaurant Use Permit (ARUP) prior to beginning such alcohol sales. The Zoning Administrator may approve the (ARUP) with standard conditions as provided for in Sections 15.30.030 and 15.30.040 of this code.

B. In the same manner as a conditional use permit pursuant to Chapter 15.70 of this code, the purpose of the ARUP review is to assure the alcohol serving establishment maintains compatibility with respect to the particular use on the particular site and in consideration of other existing and potential uses within the general area in which such use is proposed to be located, and that the particular use minimizes its impacts on City services, while allowing some flexibility in the issuance and procedures relative to the granting of a use permit for certain categories of restaurants.

(Ord. 3232 (part), 2016; Ord. 3114 (part), 2008).

### **15.71.020. Application.**

An application for an ARUP or an amendment to an ARUP shall include the following materials, in addition to the application requirements of Section 15.70.020 of Chapter 15.70, provided that the Director of Community Development or his/her designee may waive submission of items deemed unnecessary:

A. A statement specifying the nature of the establishment, the proposed hours of operation, whether the applicant proposes to have or allow live entertainment and/or dancing, and other pertinent information regarding the operational characteristics of the proposed eating and drinking establishment;

B. A plot plan of the property drawn to scale showing the location of all buildings, storage facilities, planting areas, signs, outside eating areas, walls, parking areas, curb cuts, and inside/outside queuing areas;

C. A floor plan of any building delineating all interior floor space and indicating its proposed use, including but not limited to the proposed occupancy of each area of the premises, server stations, seating and tables (type, size and whether fixed or not fixed), dance floor, whether temporary or permanent, if any, location of pool tables or other amusement devices, restrooms,

customer waiting/service area, kitchen/food preparation facilities and washing/cleaning facilities, which shall include facilities for cleaning/disposal of fats, oils and greases in compliance with Chapter 12.20 of this code and the National Pollution Discharge and Elimination System (NPDES);

D. A parking layout and traffic plan showing all parking spaces, aisles, access points and directional signs and markings, including delivery locations;

E. A grading plan indicating how the property is to be graded and drained, if grading is proposed or necessary;

F. Elevations including all building and sign faces and materials;

G. A proposed security plan addressing the criteria set forth in Section 15.30.040.I.6.e. (Security);

H. A signed, notarized consent from the owner of the real property on which the use is proposed. The consent form shall identify the property owner's approval of the proposed use and operational characteristics, including a statement that the business as proposed complies with any lease or rental agreement for the premises.

I. Such other plans, drawings and information as the Director of Community Development or his/her designee may reasonably require.

(Ord. 3232 (part), 2016; Ord. 3114 (part), 2008).

#### **15.71.030. Public notification and determination.**

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

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

1. At least ten business days prior to the public hearing, notice of the hearing shall be mailed to the applicant and all owners 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 business days prior to the public hearing, a notice of the hearing shall be posted at the project site in clear public view;

3. The notice of the public hearing by the Zoning Administrator shall contain:

- a. A description of the location of the project site and the requested determination;
- b. A statement of the purpose of the proposed administrative decision;
- c. The date and time of the public hearing;
- d. A reference to application materials on file for detailed information;
- e. A statement regarding rights of appeal.

4. The application to the Zoning Administrator may be approved with conditions or denied. Approvals shall be subject to the standard development standards contained within Section 15.30.040.I.5, and standard conditions contained within sections 15.30.040.I.6 and

15.30.040.I.7, when applicable, and those conditions the Director finds necessary to ensure compatibility with the surrounding area and the Fullerton General Plan.

B. Decisions of the Zoning Administrator or his/her designee shall be final, unless appealed.  
(Ord. 3232 (part), 2016; Ord. 3114 (part), 2008).

#### **15.71.040. 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, except that any business which sells alcoholic beverages for on-site consumption in the C-3 zones of the City that is determined a nuisance, pursuant to Section 15.30.040.I.10, shall be processed according to said section.

(Ord. 3114 (part), 2008)

#### **15.71.050. Expiration.**

Any ARUP granted in accordance with the terms of this chapter shall automatically expire within twelve (12) months from the date of approval unless a license has been issued or transferred by the California State Department of Alcoholic Beverage Control prior to the expiration date. The Planning Commission, or the Director of Community Development or his/her designee, as the case may be, may grant a time extension for a use permit for an alcoholic beverage outlet for a period or periods not to exceed twelve (12) months. An application for a time extension shall be made in writing to the Director of Community Development or his/her designee no less than thirty (30) days or more than ninety (90) days prior to the expiration date.

(Ord. 3232 (part), 2016; Ord. 3114 (part), 2008).

#### **15.71.060. Revocation.**

A. Upon violation of any provision of this chapter or Sections 15.30.030 or 15.30.040 of this code, or upon failure to comply with the conditions of approval, or in the event that a conditionally-permitted use is not used, has expired, or is found to be voluntarily abandoned for a ninety (90) day period, the Community Development Department shall serve the property owner with a notice of intent to revoke the ARUP.

B. Such notice shall contain the following information:

1. A description of the subject property, including street address, Assessors Parcel Number(s) or legal description.
2. The names of the owner and names of occupants, if other than the owner.
3. The ARUP file number and date of issuance.
4. A description of the use that the ARUP authorizes.
5. A statement as to the conditions of approval that are not being complied with and the manner of noncompliance, or the nature of the permit's expiration or abandonment.

6. A statement that the Planning Commission will hold a public hearing to determine if there is a failure to comply with one or more conditions of approval or violation of other requirements applicable to the ARUP, and that the Planning Commission may either revoke the ARUP or take such other actions as deemed appropriate to ensure compliance with the conditions of approval or other requirements.

7. A statement that the owner and/or occupant may appear in person and or be represented by legal counsel, may present oral and written evidence, and may call witnesses and may ask questions of witnesses called on behalf of the city.

C. The Planning Commission shall call a public hearing to determine if the conditions of the ARUP or other requirements have been violated, and must make the following findings:

1. That the ARUP contains certain conditions or other requirements applicable to the ARUP that are not being complied with on a certain date or within a period of time.

2. That the failure to comply with the conditions or requirements was done knowingly and intentionally or with reckless disregard of the requirements for compliance or, if not knowingly or intentionally or with reckless disregard, the failure to comply was not corrected by the date of the hearing.

3. Those findings required by section 15.30.040.I.11 of this code.

D. Any business with an ARUP pursuant to this chapter which has become a nuisance may have its use permit revoked pursuant to Section 15.30.040.I.10 of this code.

(Ord. 3114 (part), 2008).



**FULLERTON PLANNING COMMISSION  
NOTICE OF PUBLIC HEARING  
PROJECT REFERENCE NO.: PRJ18-00183  
Fullerton Municipal Code Amendment Pertaining to Regulations  
for Businesses Selling Alcohol for On-Site Consumption**

The City of Fullerton encourages the public to participate in the decision-making process. The following notice is being provided so that you can ask questions, make comments and stay informed about projects that might be important to you. We encourage you to contact us prior to the Public Hearing if you have any questions.

**Meeting Time and Date**

This matter will be heard on **Wednesday, February 27, 2019 at 7:00 p.m.** by the Fullerton Planning Commission in the Fullerton City Council Chamber, 303 West Commonwealth Avenue, Fullerton, CA 92832.

**What is the Proposed Action?**

The Planning Commission will consider amendments to the Fullerton Municipal Code Title 15 (Zoning Ordinance) to update and clarify operational standards, permitted uses, process for review and enforcement for businesses selling alcohol for on-site consumption citywide.

**Who to Contact for Questions or Comments**

If you have any questions or would like to comment on the proposed action prior to the public hearing, please contact Matt Foulkes with the Community Development Department at (714) 738-6878 or by email at [MattF@CityofFullerton.com](mailto:MattF@CityofFullerton.com).

**Where to Get More Information**

Additional details regarding the proposed action, including the full text of the staff report, may be found on the City website 72-hours prior to the public hearing at: <https://fullerton.legistar.com/Calendar.aspx>. Choose "2019" from the left drop-down menu; "Planning Commission / Landmarks Commission" from the right drop-down menu and click on the "Agenda" link for the February 27, 2019 meeting to download the document(s).

**Planning Commission Action Items**

The Planning Commission will consider the proposed amendments to the Fullerton Municipal Code Titles 3 and 15; their action will be a recommendation to the City Council. This amendment is exempt from the California Environmental Quality Act (CEQA) per the General Rule Exemption identified in Section 15601(b)(3) of the State CEQA Guidelines because the proposed amendment does not have potential to cause a significant effect on the environment.

**Si tiene preguntas en español, favor de llamar a Christine Hernandez al (714) 738-3163.**

**한국어 통역이 필요하시면 줄리 리스민에게 연락해주세요 (714) 738-6563.**

If you need any accommodations to ensure your accessibility to the meeting,  
please contact Susana Barrios at (714) 738-6874.

*If you challenge the decision on the above matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Fullerton at, or prior to, the public hearing. (Government Code 65009 (a))*

PLANNING COMMISSION  
RESOLUTION NO. PC 2019-03



RESOLUTION NO. PC 2019-03

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL AMEND FULLERTON MUNICIPAL CODE CHAPTERS 15.04, 15.30, 15.31, 15.71 AND TO UPDATE DEVELOPMENT AND OPERATIONAL STANDARDS, PROCESSES AND ENFORCEMENT TOOLS FOR BUSINESSES SELLING ALCOHOL FOR ON-SITE CONSUMPTION

PRJ18-00183, LRP18-00006

APPLICANT: CITY OF FULLERTON

RECITALS:

1. WHEREAS pursuant to FMC §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
2. WHEREAS the Planning Commission of the City of Fullerton has held a duly noticed public hearing, as required by law, for PRJ18-00183-LRP18-00006, 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
3. WHEREAS the proposed Zoning Amendment 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.

RESOLUTION

The Planning Commission finds as follows:

Finding 1: The proposed Zoning Ordinance amendment is consistent with the objectives of the Zoning Ordinance and General Plan.

Fact: The amendment is authorized by FMC Chapter 15.72. In addition, the City Council adopted a Resolution of Intention on June 5, 2018, to update the Municipal Code stating its intention to consider amendments to the Fullerton Municipal Code (FMC) updating development and operational standards, processes and enforcement tools for businesses selling alcohol for on-site consumption.

Fact: This amendment is consistent with multiple General Plan policies, including the following:

**P1.11 Compatibility of Design and Uses** Support policies and regulations to consider the immediate and surrounding contexts of projects to promote positive design relationships and use compatibility with adjacent built environments and land uses, including the public realm.

**P8.3 Consideration of Noise in Land Use Decisions:** Support policies and regulations which ensure noise-compatible land use planning recognizing the relative importance of noise sources in order of community impact, the local attitudes towards



these sources, and the suburban or urban characteristics of the environment, while identifying noise sensitive uses.

**P10.12 Downtown Economy Diversification:** Support programs and regulations that diversify the Downtown economy to create more economic activity.

**P10.16 Economic Strategies in Focus Areas** Support policies and regulations pertaining to planning efforts for the City's Focus Areas that facilitate investment and encourage economic activity that benefits the Fullerton community and the City.

**P12.11 Public Safety in Focus Areas** Support policies and regulations to proactively address public safety concerns as part of community-based planning of Focus Areas.

**P13.11 Crime Reduction Strategies** Support policies and regulations to create problem-solving strategies and plans for areas with higher crime rates in the City and to reduce crime by implementing these strategies and plans through a range of measures including increased policing activities, neighborhood partnerships and other innovative programs

Finding 2: The proposed Zoning Ordinance amendment promotes the public health, safety and welfare of the community.

Fact: The proposed amendments to Titles 3 and 15 will promote the public health, safety and welfare by providing clear and enforceable operational requirements for businesses selling alcohol for on-site consumption and create a more streamlined enforcement process for operators who violate the terms of their land use and/or Entertainment Permits.

THEREFORE, the Planning Commission of the City of Fullerton does hereby recommend APPROVAL of said modifications to Fullerton Municipal Code Title 15 as follows:

[New text in **bold**, deleted text in ~~strike-through~~]

## Chapter 15.04, INTERPRETATION AND DEFINITIONS:

Chapter 15.04.040 shall be amended as follows:

**“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) means 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.

**RESTAURANT** means 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 ON-SITE ALCOHOL SALES** means 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.

**RESTAURANT WITH ENTERTAINMENT** means 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.

**RECEPTION HALL (also BANQUET FACILITY)** means 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.”

Chapter 15.30 shall be 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 the exception that restaurants serving alcohol pursuant to an on-premise liquor sales license issued by the State Department of Alcoholic Beverage Control must also obtain an Administrative Restaurant Use Permit subject to FMC 15.30.040.H and FMC 15.71.~~ **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, with the exception that restaurants serving alcohol pursuant to an on-premise liquor sales license issued by the State Department of Alcoholic Beverage Control must also obtain an Administrative Restaurant Use Permit subject to FMC 15.30.040.H and FMC 15.71.~~ **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 subject FMC 15.30.040.I,~~ **including Tavern and Cocktail Lounge subject to FMC 15.31.**
- ~~13. Dancing as an ancillary use to a Restaurant subject to FMC 15.30.040.I~~
- ~~20. Live entertainment as an ancillary use to a Restaurant subject to FMC 15.30.040.H~~
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, with the exception that restaurants serving alcohol pursuant to an on-premise liquor sales license issued by the State Department of Alcoholic Beverage Control must also obtain an Administrative Restaurant Use permit subject to FMC 15.30.040.H and FMC 15.71~~ **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 subject to FMC 15.30.040.I~~ **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~~ with the exception that restaurants serving alcohol pursuant to an on-premise liquor sales license issued by the State Department of Alcoholic Beverage Control must also obtain an Administrative Restaurant Use permit subject to FMC ~~15.30.040.H 15.31 and FMC 15.71.~~**

Chapter 15.30.040 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.

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.**

- A. 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.

ADOPTED BY THE FULLERTON PLANNING COMMISSION ON FEBRUARY 27, 2019.

  
Chris Gaarder, Chair

ATTEST:

  
Susana Barrios, Recording Clerk

City of Fullerton  
RESOLUTION CERTIFICATION

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) SS  
CITY OF FULLERTON     )

RESOLUTION NO. PC-2019-03

I, Susana Barrios, Recording Clerk of the Landmarks/Planning Commission of the City of Fullerton, California, hereby certify that the whole number of the members of the Planning Commission of the City of Fullerton is five; and that the above and foregoing Resolution No. PC-2019-03 was adopted at the February 27, 2019 Planning Commission regular meeting by the following vote:

LANDMARKS/PLANNING COMMISSIONER AYES:     Garder, Carvalho, Hansburg,  
Pendergraft, Shanfield

LANDMARKS/PLANNING COMMISSIONER NOES:     None

LANDMARKS/PLANNING COMMISSIONER ABSTAINED:     None

LANDMARKS/PLANNING COMMISSIONER ABSENT:     None

  
\_\_\_\_\_  
Susana Barrios, Recording Clerk