

ORDINANCE NO. 1761 N.C. (2d)

**AN ORDINANCE OF THE CITY OF VALLEJO AMENDING
TITLE 16 (ZONING ORDINANCE) OF THE VALLEJO
MUNICIPAL CODE REGARDING ALCOHOL SALES, SERVICE
AND PRODUCTION ESTABLISHMENTS**

THE COUNCIL OF THE CITY OF VALLEJO DOES ORDAIN AS FOLLOWS:

Based on the findings herein as stated in the resolution and the staff report, the City Council hereby adopts the following amendments to Title 16 of the Vallejo Municipal Code.

SECTION 1: The following sections contained in Chapter 16.04 "Definitions" of the Vallejo Municipal Code are hereby amended to read as follows:

"16.04.046	Average slope.
16.04.047	Banks and financial institutions.
16.04.048	Banquet facility, ancillary.
16.04.048.5	Banquet facility, stand alone.
16.04.049	Bar, night club, lounge, tavern, taproom.
16.04.055	Brewpub.
16.04.131	Convenience store.
16.04.145	Distillery.
16.04.235	Grocery store.
16.04.281	Late night alcohol sales or service.
16.04.285.5	Liquor store, large format.
16.04.286	Live entertainment and dancing.
16.04.315	Micro-brewery/micro-distillery.
16.04.316	Mini-market associated with fuel sales.
16.04.383	Regional brewery.
16.04.391	Restaurant, full service.
16.04.392	Restaurant, limited service.
16.04.393	Restaurant with drive-through.
16.04.394	Restaurant with live entertainment or dancing.
16.04.571	Tasting room, accessory use.
16.04.571.5	Tasting room, primary use.
16.04.605	Wine Cellar.
16.04.606	Winery.
16.04.607	Wine Shop.

16.04.048 - Banquet facility, ancillary.

"Banquet facility, ancillary" means a room or area, or portion thereof, that is rented, leased or otherwise made available to any person or group for a private event or function, whether or not a fee is charged, where the banquet facility use is incidental and subordinate to the facility's primary use as a restaurant, hotel, golf course, winery, microbrewery or other use.

16.04.048.5 - Banquet facility, stand alone.

“Banquet facility, stand alone” means a building, facility, room, or portion thereof, which is rented, leased or otherwise made available to any person or group for a private event or function, whether or not a fee is charged.

16.04.049 - Bar, night club, lounge, tavern, taproom.

“Bar, night club, lounge, tavern, taproom” means an establishment that sells beer, wine, and/or distilled spirits in accordance with applicable California Department of Alcoholic Beverage Control regulations and may include live entertainment and/or dancing, and where food service is incidental and subordinate to the sale of alcohol.

16.04.055 - Brewpub.

“Brewpub” means a full service restaurant with an on-site brewery that sells a minimum of twenty five percent of beer brewed on-site for on premise consumption.

16.04.131 - Convenience store.

“Convenience store” means small, neighborhood-serving establishment of less than five thousand square feet that sells a range of food and merchandise oriented to daily convenience shopping needs such as limited groceries, packaged food, tobacco products, non-alcoholic beverages, and other household goods for off-site consumption. A convenience store may sell beer and wine under a California Department of Alcoholic Beverage Control Type 20 license provided the total floor area devoted to display of such products does not exceed ten percent of the gross floor area. A convenience store which sells distilled spirits in addition to beer and wine under a California Department of Alcoholic Beverage Control Type 21 license is a liquor store.

16.04.145 - Distillery.

“Distillery” means a facility authorized to produce, bottle, rectify, process, and store distilled spirits or alcohol (i.e. vodka or grain spirits), including, but not limited to: whiskey, gin, brandy, blended applejack, rum, tequila, cordials and liqueurs. Eating areas, tasting rooms and retail areas are permitted as accessory uses provided the floor area devoted to such uses does not exceed twenty five percent of the gross floor area including kitchen, food preparation, and retail and seating areas.

16.04.235 - Grocery Store.

“Grocery store” means a retail establishment of five thousand square feet or more and where the majority of floor area open to the public is occupied by fresh or packaged food products to be sold for preparation and consumption off-site. “Grocery store” includes retail chains that carry a full range of food and household products and have more than one location, and retail bakeries where any on-site baking is only for on-site sales. “Grocery store” does not include big box stores that combine grocery sales with a retail store.

16.04.281 - Late night alcohol sales or service.

"Late night alcohol sales or service" means any alcohol sales or service, for either on premise or off premise consumption, after eleven-thirty p.m. Such activity shall be subject to the provisions of Section 16.57.030.

16.04.285 - Liquor store.

"Liquor store" means a retail establishment that sells packaged alcoholic beverages including beer, wine, and distilled spirits under a California Department of Alcoholic Beverage Control Type 21 license, not including large format stores.

16.04.285.5 - Liquor store, large format.

"Liquor store, large format" means a liquor store with seven thousand square feet or more of gross floor area with standard retail hours of operation terminating no later than eleven-thirty p.m.

16.04.286 - Live entertainment and dancing.

"Live entertainment and dancing" associated with an eating or drinking establishment means any "public dance" and/or live musical performances where fixed seating or chairs are not provided for each patron or customer in attendance. A fee or cover charge may or may not be imposed. A "public dance" shall not include dancing at a banquet facility, where the rental of such hall is for a private function and not open to the general public. "Live entertainment" includes musical acts, karaoke, theatrical acts, stand-up comedy, magic acts, disc jockey, and similar activities.

16.04.315 - Micro-brewery/micro-distillery.

"Micro-brewery/micro-distillery" means a small-scale facility that produces and packages a maximum of fifteen thousand barrels (four hundred sixty-five thousand gallons) of alcoholic beverages per year for distribution, retail, or wholesale, on or off premises consumption and which meets all applicable California Department of Alcoholic Beverage Control regulations. Eating areas and tasting rooms are permitted as accessory uses to a micro-brewery/micro-distillery.

16.04.316 - Mini-market associated with fuel sales.

"Mini-market associated with fuel sales" means an establishment that sells a range of food and merchandise oriented to the motoring public with limited groceries, prepackaged or quick service food products, tobacco products and beverages. Such an establishment may have a California Department of Alcoholic Beverage Control Type 20 license and must meet the requirements of Business and Professions Code Section 23790.5.

16.04.383 - Regional brewery.

"Regional brewery" means a facility authorized to annually produce over fifteen thousand barrels (four hundred sixty-five thousand gallons) of beer, and is responsible for

beer production, storage, bottling or packaging, and other similar activities. Eating areas, tasting rooms and retail areas are permitted as accessory uses provided the floor area devoted to such uses does not exceed twenty-five percent of the gross floor area including kitchen, food preparation, and retail and seating areas.

16.04.391 - Restaurant, full service.

“Restaurant, full service” means an establishment that serves food and beverages prepared on-site, where orders are delivered to a customer’s seating area for on-site consumption. Take-out service must be optional and ancillary to on-site food service. Bar service areas, if provided, must be clearly incidental and accessory to the primary food service use and meet the California Department of Alcoholic Beverage Control regulations for a Type 41 or 47 license.

16.04.392 - Restaurant, limited service.

“Restaurant, limited service” means an establishment that prepares food or sells packaged food for on-site consumption, take-out, or delivery. Typically, customers self-serve or are served from a walk-up counter. This classification includes cafeterias, delicatessens, fast-food or quick-service restaurants, sandwich shops, pizza parlors, snack bars, take-out restaurants, and catering businesses or bakeries that have a storefront restaurant component. These uses may have a beer and wine license that meets the California Department of Alcoholic Beverage Control regulations for a Type 41 license but such activity must be clearly incidental and accessory to the primary food service use.

16.04.393 - Restaurant with drive-through.

“Restaurant with drive-through” means an establishment from which prepared food, coffee, or other non-alcoholic beverages may be purchased by motorists who remain in their vehicles during the sales transaction. Drive-through sales may be the establishment’s primary use or may be ancillary to an on-site full service or limited service restaurant.

16.04.394 - Restaurant with live entertainment or dancing.

“Restaurant with live entertainment or dancing” means a full service or limited service restaurant that also provides live entertainment or dancing to live or recorded music for patrons. “Restaurant with live entertainment or dancing” does not include an establishment which provides coin-operated music player machines (i.e., jukeboxes) or other ambient recorded music. A “restaurant with live entertainment or dancing” is not a billiard or pool hall, video arcade, bowling alley or adult entertainment business.

16.04.571 - Tasting room, accessory use.

“Tasting room, accessory use” means a facility that allows on-site tasting of alcoholic beverages and retail sales and possesses the appropriate California Department of Alcoholic Beverage Control license type. An accessory tasting room may be operated within a winery, micro-brewery/micro-distillery, grocery store, large format liquor store or

wine shop as an accessory use provided it does not exceed fifteen percent of the gross building area and does not operate later than eleven-thirty p.m. "Tasting room, accessory use" is not permitted in liquor stores, convenience stores or mini-markets associated with fuel sales.

16.04.571.5 - Tasting room, primary use.

"Tasting room, primary use" means a facility of two thousand five-hundred square feet in gross floor area or less that is used for the sale and sampling of alcoholic beverages and operated in conjunction with a separate alcoholic beverage production facility licensed under a California Department of Alcoholic Beverage Control Type 02 license. Such a facility is located on a different lot or parcel of land than the production facility. Food service is limited and clearly incidental or accessory to the primary use; live entertainment or dancing, and late night alcohol sales and service are prohibited.

16.04.605 - Wine Cellar.

"Wine cellar" means a storage warehouse facility that is responsible for the blending, cellar treatment, storage, bottling, and/or packaging of wine but does not engage in wine production. Eating areas, tasting rooms and retail areas are permitted as accessory uses provided the floor area devoted to such uses does not exceed twenty-five percent of the gross floor area including kitchen, food preparation, and retail and seating areas.

16.04.606 - Winery.

"Winery" means a facility authorized to produce wine and responsible for wine production, blending, cellar treatment, storage, bottling or packaging, and other similar activities. Eating areas, tasting rooms and retail areas are permitted as accessory uses provided the floor area devoted to such uses does not exceed twenty-five percent of the gross floor area including kitchen, food preparation, and retail and seating areas.

16.04.607 - Wine Shop.

"Wine Shop" means a retail establishment that specializes solely and exclusively in the sale of wine and wine related products, and which may hold ancillary wine tasting events."

SECTION 2: Section 16.06.340 "Eating and drinking establishments" contained in Section 16.06 "Use Classifications" of the Vallejo Municipal Code is hereby amended to read as follows:

"16.06.340 Eating and drinking establishments.

The eating and drinking establishments use type refers to establishments or places of business primarily engaged in the sale of prepared food and beverages for on-premises consumption. Typical uses include restaurants, bars, brewpubs and tasting rooms, but does not include adult uses as defined and regulated by Chapter 16.59."

SECTION 3: Section 16.06.500 “Wholesaling, storage and distribution” contained in Section 16.06 “Use Classifications” of the Vallejo Municipal Code is hereby amended to read as follows:

“16.06.500 - Wholesaling, storage, and distribution.

Wholesaling, storage, and distribution refers to establishments or places of business primarily engaged in wholesaling, storage, distribution and open-air handling of materials and equipment other than live animals and plants. The following are wholesaling, storage and distribution use types:

- A. Light. Wholesaling, storage and warehousing services within enclosed structures. Typical uses include wholesale distributors, food and beverage processing including micro-brewery/micro-distillery, regional breweries, distilleries, wineries, wine cellars, and manufacturing plants, storage warehouse or moving and storage firms.
- B. Heavy. Open-air storage, distribution and handling of materials and equipment. Typical uses include monument or stone yards, grain elevators or open storage yards.”

SECTION 4. Section 16.28.030 “Permitted uses subject to limitations” contained in Chapter 16.28 “Freeway Shopping and Service District” of the Vallejo Municipal Code is hereby amended to read as follows:

“16.28.030 - Permitted uses subject to limitations.

The following use types are permitted subject to the applicable provisions of Chapter 16.57 (the letter in parentheses following the use type refers to the subsection of Section 16.57.020 which applies):

- A. Commercial Use Types
 - 1. Eating and drinking establishments (J, K);
 - 2. Scrap operations: collection facility; small (W);
 - 3. Food and beverage retail sales (L)”

SECTION 5. Subsections (J), (K), and (L) of Section 16.57.020 “Applicability” contained in Chapter 16.57 “Limitations on Permitted Uses” of the Vallejo Municipal Code are hereby amended to read as follows:

“J. Eating and Drinking Establishments.

- 1. Eating and drinking establishments offering live entertainment, dancing or late night alcohol beverage service and stand-alone banquet facilities offering alcohol beverage service, and bars, nightclubs, lounges, taverns, and taprooms offering alcohol beverage service in the Neighborhood Shopping and Service District shall require a major conditional use permit, as prescribed in Chapter 16.82. The planning commission may only grant such a permit if it finds, based on the substantial evidence in the record, that the conditions described in Section 16.82.050 exist. The planning commission shall also find that the location and operating characteristics of the proposed alcohol sales will not adversely affect

sensitive land uses in the surrounding area, including, but not limited to, residences, schools, parks, playgrounds, places of religious assembly, hospitals, and convalescent homes. For the purposes of this section, "adversely affect" means to impact in a substantial, negative manner the economic value, habitability, or enjoyment of properties in the immediate area.

2. Bars, nightclubs, lounges, taverns, and taprooms offering alcoholic beverage service shall require an administrative permit, as prescribed in Chapter 16.96.

K. Eating and Drinking Establishments [with a Drive-Through]: All restaurants with a drive-through are subject to a major conditional use permit, as prescribed in Chapter 16.82.

L. Food and Beverage Retail Sales.

1. Liquor stores, convenience stores, and mini-markets associated with fuel sales offering alcoholic beverages for off-premise consumption shall be subject to a major conditional use permit, as prescribed in Chapter 16.82. The planning commission may grant such a permit only if, from the facts presented with the application, at the public hearing, or as determined by investigation, it finds that the conditions described in Section 16.82.050 exist. In addition, the commission must find that the location and operating characteristics of the proposed alcohol sales will not adversely affect sensitive land uses in the immediate area, including, but not limited to, residences, schools, parks, playgrounds, places of religious assembly, hospitals, and convalescent homes. For the purposes of this section, "adversely affect" shall mean to impact in a substantial, negative manner the economic value, habitability, or enjoyability of properties in the immediate area.
2. No liquor store, except for a large format liquor store, or convenience store, or mini-market associated with fuel sales offering alcoholic beverages for off-premise consumption shall be established within one thousand feet of a property containing an existing or approved liquor store, convenience store or mini-market associated with fuel sales offering alcoholic beverages for off-premise consumption."

SECTION 6. Subsection (B) is hereby added to Section 16.57.030 "General limitations" contained in Chapter 16.57 "Limitations on Permitted Uses" of the Vallejo Municipal Code as follows:

"B. Late Night Alcohol Sales or Service. Any retail or eating or drinking establishment that sells or serves alcohol after eleven-thirty p.m. shall require a major conditional use permit, as prescribed in Chapter 16.82. In deciding whether to issue a major conditional use permit, the planning commission shall consider the impacts of any discretionary land use that is already subject to a major use permit and that also proposes to engage in late night alcohol sales and/or service. The planning commission, in considering the impacts of late night alcohol sales and service, may approve, conditionally approve, or deny late night alcohol sales and service as it deems necessary to, manage, minimize, mitigate, eliminate or reduce the impacts of that activity on the public health and safety."

SECTION 7. Subsection (C) is hereby added to Section 16.62.030 "Computation rules" contained in Chapter 16.62 "Off-street Parking and Loading Regulations" of the Vallejo Municipal Code as follows:

"C. For wholesaling, storage and distribution uses (including but not limited to breweries, distilleries and wineries) which have ancillary activities such as eating and retail areas, the parking requirement shall be based on the maximum peak use parking demand of either the primary or accessory use. If the peak period of the primary and accessory uses coincide, the parking requirement shall be based on combined demand, or as approved by the Planning Manager."

SECTION 8. Section 16.78.120 "Automatic deemed approved status" contained in Chapter 16.78 "Nonconforming Use and Deemed Approved Alcoholic Beverage Sale and Tobacco Retailer Regulations" of the Vallejo Municipal Code is hereby amended as follows:

"16.78.120 - Automatic deemed approved status.

All businesses engaged in the sale of alcoholic beverages, including eating and drinking establishments that were nonconforming uses prior to August 25, 1998 and not possessing a major conditional use permit for the sale and service of alcohol shall automatically become deemed approved uses and shall no longer be considered nonconforming uses. Each such deemed approved use shall retain this status and may continue to engage in late night alcohol service, dancing and/or live entertainment provided such activities were lawfully engaged in prior to August 1, 2017, and as long as it complies with the deemed approved performance standards as specified in Section 16.78.150. None of the provisions of this chapter restrict any authority to require modification or termination of any deemed approved use which does not conform to the provisions of Section 16.78.150 or which has been declared to be a nuisance by the city council.

Any business engaged in the sale of alcoholic beverages that obtained a major use permit for the sale and service of alcohol prior to August 1, 2017 may continue to lawfully operate pursuant to the terms and conditions of its major use permit so long as that permit has not been modified, revoked, suspended, or abandoned as set forth in Sections 16.82.110 to 16.82.150."

SECTION 9. Subsections (Q) and (R) of Section 16.82.060 "Standards and criteria for certain conditionally permitted uses" contained in Chapter 16.82 "Conditional Use Permit Procedure" of the Vallejo Municipal Code are hereby amended as follows:

"Q. Eating and drinking establishments that offer live entertainment, dancing and/or late night alcohol sales or service shall comply with the following restrictions:

1. Shall be permitted only after securing a major conditional use permit, as prescribed in Chapter 16.82.
2. If adjacent to residential uses, the planning commission shall consider imposing appropriate permit conditions to limit the noise impact on the residential properties including but not limited to interior and exterior restrictions such as noise limitation, parking lot orientation, sound barriers and other performance standards.

R. Liquor stores, convenience stores, mini-markets associated with fuel sales, and food and beverage retail establishments offering late night alcohol sales or service for off-site consumption shall comply with the following restrictions:

1. Shall be permitted only after securing a major conditional use permit, as prescribed in Chapter 16.82.
2. If adjacent to residential uses, the planning commission shall consider imposing appropriate permit conditions to limit the noise impact on the residential properties including but not limited to interior and exterior restrictions such as noise limitation, parking lot orientation, sound barriers and other performance standards.

SECTION 10. Section 16.82.140 "New or amended use permit required" contained in Chapter 16.82 "Conditional Use Permit Procedure" of the Vallejo Municipal Code is hereby amended as follows:

"16.82.140 - New or amended use permit required.

A new or amended use permit shall be required if any of the following situations apply:

- A. There is a change in type of license issued by the state of California Department of Alcoholic Beverage Control for a liquor store, convenience store or mini-market associated with fuel sales.
- B. The floor area devoted to the display and/or sales of alcoholic beverages for a liquor store, convenience store or mini-market associated with fuel sales is to be expanded by more than twenty percent (this requirement does not include expansion of service, storage, or sales areas for items other than alcoholic beverages)."

SECTION 11. Section 16.96.080 "Administrative Permit procedure for alcohol sales, service or production" is hereby added to Chapter 16.96 "Administrative Permit Procedure" of the Vallejo Municipal Code as follows:

"16.96.080 Administrative Permit procedure for alcohol sales, service or production.

- A. Purpose and Applicability. Each zoning district within the city permits particular uses suitable to that district. Certain other uses involving alcohol sales, service or production are presumed compatible but may create concerns within the immediate environs depending upon the circumstances of the individual case. The administrative permit process is an expedited discretionary review process. Each permit will be considered individually by the development services director or his or her designee, and permitted, conditionally permitted, or denied. Any conditions of approval must be necessary to address the impacts of the project or necessary to retain the characteristics intended by zoning.
- B. Application Filing and Processing. An applicant seeking a use involving the sales, service or production of alcoholic beverages requiring an administrative permit shall file an administrative permit application containing information on the use and its impacts as prescribed by the development services director and shall pay any processing fees prescribed by the city council. The application shall be processed in accordance with the provisions set forth in this section.

C. **Review Authority.** The development services director shall review and approve, conditionally approve, or deny all administrative permit applications. Any permit approval, conditional approval, or denial shall be accompanied by written findings showing:

1. Whether the proposed use is consistent with all applicable sections of the general plan, any applicable specific plan or master plan, or provisions this title of the Municipal Code;
2. Whether the proposed use and the conditions under which it would be operated or maintained will be detrimental to the public health and safety, or be materially injurious to properties or improvements in the vicinity;
3. Whether the proposed use includes late night alcohol sales and service, dancing and/or live entertainment, or a drive-through which would require issuance of a major conditional use permit; and
4. Any other findings as deemed necessary to support approval or denial of the proposed use.

D. **Notice.** Prior to action on an administrative permit, the development services director shall provide written notice by direct mail to the applicant, tenants, and property owners on properties within a radius of ~~one~~ **five** hundred feet of the project site's property boundaries, as well as any person who files written request to receive administrative permit notices. Such notice shall advise the applicant, tenants, and property owners of the development services director's intent to issue or deny an administrative permit, including any conditions of approval, within ten **business** days of such mailing unless a written request is received citing specific grounds why the permit should be issued or denied in contradiction to the development services director's preliminary decision, and/or suggesting additional restrictions or considerations for the development services director's consideration. Upon receiving such request within the ten **business** day review period, the development services director may modify the action and send notice of such action to all the parties noticed and advising of a ten **calendar** day appeal period in writing to the planning commission. If no request is received within the ten **calendar** day noticing period, then the development services director's action on the administrative permit is deemed final without the ability of appeal.

E. **Appeals.** If an appeal of the development services director's decision is filed within the ten **calendar** day appeal period, the development services director shall refer the administrative permit directly to the planning commission for hearing and decision. The hearing before the planning commission shall be conducted in compliance with Section 16.102.030 except that the same mailing list generated for the administrative permit shall be used for noticing of the planning commission hearing.

F. **Director's Referral.** The development services director may refer the administrative permit directly to the planning commission for hearing and decision at any point in the administrative permit process. The hearing before the planning commission shall be conducted in compliance with Section 16.82.030. Public notices for the administrative permit shall be used for noticing the planning commission hearing."

SECTION 12. The proposed Ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1, "Existing Facilities") of Title 14 of the California Code of Regulations. The Code amendments modify the permitting process for uses that are already allowed in the zoning districts, and will result in no or negligible expansion of use beyond that currently existing. The Ordinance is also exempt from

CEQA pursuant to Section 15061(b)(3), as it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

SECTION 13. Severability.

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases may be declared invalid. To this end, the provisions of this Ordinance are declared to be severable.

SECTION 14: Effective Date.

This Ordinance shall take effect and be in full force and effect from and after (30) days after its final passage.

FIRST READ at a regular meeting of the Council of the City of Vallejo held on the 23rd day of May 2017 and finally passed and adopted a regular meeting of the Council held on the 13th day of June 2017 by the following vote:

AYES:	Mayor Sampayan, Vice Mayor McConnell, Councilmembers Dew-Costa, Malgapo, Miessner, Sunga, and Verder-Aliga
NOES:	None
ABSENT:	None
ABSTAIN:	None


BOB SAMPAYAN, MAYOR

ATTEST:


DAWN G. ABRAHAMSON, CITY CLERK