

**ORDINANCE NO. 2324**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VICTORVILLE APPROVING DEV14-00003, A TITLE 16 MUNICIPAL CODE AMENDMENT MODIFYING ALCOHOLIC BEVERAGE SALES REGULATIONS CITYWIDE**

**WHEREAS**, establishments that sell alcohol, particularly establishments selling alcohol for off-site consumption and bars, tend to be associated with disproportionate demands on City services and negative impacts on the community and businesses; and

**WHEREAS**, a joint meeting/workshop of the Planning Commission and City Council was held on April 22, 2014 regarding problematic commercial uses including alcohol establishments, with presentations by Supervising Agent Armando Gonzalez with the Department of Alcoholic Beverage Control and Police Captain Sam Lucia; and

**WHEREAS**, pursuant to Section 16-2.01.020 of the Victorville Municipal Code, the City of Victorville has initiated amendments to Title 16 of the Victorville Municipal Code; and

**WHEREAS**, Pursuant to Title 7, Chapter 4, Article 2 of the Government Code of the State of California, the Victorville Planning Commission held a public hearing on the 13th day of August, 2014, to hear arguments for and against the amendments and; after hearing all testimony offered; the Commission unanimously adopted Resolution No. P-14-052, which recommended to the City council adoption of alcohol amendments specified in case DEV14-00003; and

**WHEREAS**, California law does not preempt local land use and zoning regulations with regard to the sale of alcoholic beverages and the authority to regulate nuisance conditions created by alcoholic beverage retailers derives from the City's Charter and general law police powers; and

**WHEREAS**, the City Council finds that additional regulatory measures are needed to protect residential, commercial, industrial and civic areas from the harmful effects attributable to the sale of alcoholic beverages; and

**WHEREAS**, the City Council finds that neighborhood character can change over time and the careful regulation of nuisance activity by on-site and off-site alcohol uses will help to ensure that such uses do not contribute to the deterioration of neighborhoods; and

**WHEREAS**, the City Council finds that land use regulations can be structured to provide opportunities for alcoholic beverage sales establishments to operate in a mutually beneficial relationship to each other and to other commercial services while not becoming the source of undue public nuisances in the community; and

**WHEREAS**, based upon the record as a whole, the City Council hereby finds that the proposed Municipal Code amendment is exempt from CEQA pursuant to the "General Rule" that CEQA only applies to projects that have the potential for causing a significant physical effect on the environment, (CEQA Guidelines, Section 15061 (b) (3)). The proposed amendments are minor and administrative in nature and do not raise this project to a level of significance that warrants CEQA analysis because the intensity of allowable development is not increased and there are no potentially significant environmental effects;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF VICTORVILLE DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** That the Victorville Municipal Code be amended as follows:

## **DEV14-00003 Alcohol Amendments**

Legend
Existing Text
<i>New Text</i>
<del>Relocated or Removed Text</del>
{Editing Notes}

**Sec. 16-1.03.010 Definitions**

<b><u>Alcoholic Beverage</u></b>	<u>means any liquid or solid containing alcohol, spirits, liquor, wine, or beer, that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed or combined with other substances, the sale of which requires an ABC license.</u>
<b><u>Convenience market</u></b>	<u>a retail establishment, with less than 12,000 square feet of floor area, offering for sale prepackaged food and beverage products, household items, newspapers and magazines, and sandwiches/salad and other freshly prepared foods for off-site consumption</u>
<b><u>Off-site alcoholic beverage establishment</u></b>	<u>means an establishment that conducts retail sales of alcoholic beverages for consumption off the premises where sold</u>
<b><u>On-site alcoholic beverage establishment</u></b>	<u>means an establishment that conducts retail sales of alcoholic beverages for consumption on the premises where sold</u>
<b><u>Premises</u></b>	<u>means the actual space in a building or site devoted to a particular use</u>
<b><u>Restaurant</u></b>	<u>means a bona fide eating place whose predominant function is the service of food and where alcoholic beverage sales are incidental. Incidental in this context means a restaurant with alcohol sales totaling less than twenty-five (25%) percent of all gross sales.</u>

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## Sec. 16-3.07.010 Permitted and conditional land uses – all zoning districts

Table 7-1 Permitted, Conditional, Accessory and Temporary Land Uses – All Zoning District  
 {Excerpt of Table Below. C stands for Conditional Use, P stands for Permitted, - stands for Prohibited}

T Y P E	USE	ZONE																
		AE	A	SR	R1	R2	R3	R4	MDR	RMPD	C1	C2/C4	CA	CM	IPD	M1	M2	PC
COMMERCIAL	14) ALCOHOL																	
	Bar (Net-accessory to-a-permitted-use)	-	-	-	-	-	-	-	-	-	€	€	-	-	-	-	-	-
	Nightclub	-	-	-	-	-	-	-	-	-	€	€	-	-	-	-	-	-
	Alcohol-sales within-300'-of residential-property for-off-site-or-on-site-consumption	-	-	-	-	-	-	-	-	-	€	€	€	€	€	€	€	-
	Alcohol-sales outside-of-300'-of residential-property (unless-otherwise regulated-by-this Title)	-	-	-	-	-	-	-	-	-	€	€	€	€	€	€	€	-
	<u>Alcoholic beverage sales for consumption on or off the premises (See Sec. 16-</u>	-	-	-	-	-	-	-	-	-	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>



**Sec. 16-3.07.020:****Special requirements for certain permitted and conditional uses****(a) Alcohol sales****(1) Conditional use permit required**

- (i) Except as provided in subsection (ii) and (iii) below, all alcoholic beverage establishments to which this Chapter is applicable shall obtain a conditional use permit pursuant to Article 2 of this Chapter and satisfy all conditions, as set forth in any applicable law or regulation, including any law or regulation of this Code, in any entitlement and in any license issued, prior to engaging in any alcoholic beverage sales activity.**
- (ii) Unless otherwise required by this chapter, a conditional use permit shall not be required of an establishment consisting of a general retail store, a grocery store, or a retail pharmacy with greater than 12,000 square feet of gross floor area and a maximum of 10 percent of the gross floor area devoted to the sale and display of alcoholic beverages. If found to be in violation of this Chapter, such alcoholic beverage establishments exempt from the requirement of a conditional use permit pursuant to this subsection, can lose its exemption pursuant to revocation procedures provided in Chapter 7 of this Title. If such revocation is granted, such establishment will need to comply with obtaining a conditional use permit prior to continuing the sale of alcohol.**
- (iii) Unless otherwise required by this chapter, a conditional use permit shall not be required of a restaurant, as defined, establishment that serves alcoholic beverages for on-site consumption, limited to on-sale beer and wine, non-fortified products only.**

**(2) Finding of public convenience or necessity**

- (i) In areas with an over-concentration of alcohol licenses for off-site consumption as defined pursuant to Business and Professions Code Section 23958.4, the City desires to strike a balance between the number of off-site licenses and the convenience of store customers. As a result, consideration to approve a finding of public convenience or necessity may be given by either the City Council, Planning Commission, or Zoning Administrator, as applicable, to businesses wishing to obtain an off-site license in over-concentrated areas that comply with the following criteria:**
  - a. The retailer must occupy greater than 12,000 square feet of gross floor area or be tied to a fueling station on the premises with fuel sales comprising the majority of the business's sales;**
  - b. A retailer tied to a fueling station with less than 12,000 square feet of gross floor area shall be limited to off-site beer and wine, non-fortified products only;**
  - c. No more than 10% of the floor area may be devoted to alcoholic beverage display;**
  - d. At least 10% of the floor area must be devoted to food sales;**

- e. If location of the proposed business is within a high crime area, which is defined as Police Department calls for service to alcohol-related incidences of 20% greater than the average number reported for the City as a whole, the hearing body may use that fact in denying the application or the Public Convenience or Necessity finding required for the Department of Alcoholic Beverage Control;
  - f. The property/building/use has no outstanding Building or Health Code violations or Code Enforcement activity;
  - g. The site is properly maintained, including building improvements, landscaping, and lighting; and
  - h. The owner/applicant has no history of violations with the Alcoholic Beverage Control Board and/or City of Victorville.
- (ii) Prior to the establishment of any business selling alcoholic beverages, when within the Zoning Administrator's purview, the Zoning Administrator, when required pursuant to Business and Professions Code Section 23958.4 shall make the finding of public convenience or necessity. Prior to making said finding, the Zoning Administrator shall consult with the City Police Department to receive that agency's comments. If the comments received indicate concerns, the Zoning Administrator shall not make the finding, but shall require the applicant to submit an application for a conditional use permit for Planning Commission review, when not otherwise required.
- (iii) If any other discretionary approvals are required, the public convenience or necessity finding shall be incorporated into the process for such discretionary approval review.
- ~~(2) Off-site alcohol sales~~
- ~~(i) This subsection does not apply to existing establishments currently selling off-site (off-sale) alcoholic beverages with an active beer, wine or liquor license unless the license has lapsed for more than six months or are currently prohibited from selling single-serve alcoholic beverages through a Conditional Use Permit, a Finding of Public Convenience or Necessity and/or a through a Department of Alcoholic Beverage Control license. (Section moved to Operational Standards section listed below)~~
  - ~~(ii) An establishment selling alcohol for off-site consumption shall be prohibited from selling single-serve alcoholic beverages, including, but not limited to, beer, malt liquor and alcoholic energy drinks of any size; wine of less than 750ml in size; distilled spirits of less than 375ml in size; or any other individual alcoholic beverage for single-serve consumption. (Section moved to Operational Standards section listed below)~~
- ~~(3) Distance requirements~~
- ~~(i) No off-site alcoholic beverage establishment shall be located within 600 feet of residentially zoned property, public or private schools, religious facilities, or parks or playgrounds, except:~~

- a. A general retail store, or grocery store, or retail pharmacy with greater than 12,000 square feet of gross floor area and a maximum of 10 percent of the gross floor area devoted to the sale and display of alcoholic beverages, unless a larger percentage of display is otherwise approved by the Planning Commission; or
  - b. A convenience market with a maximum of 10 percent of the retail display area devoted to the sale and display of alcoholic beverages, limited to off-site beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers.
  - (ii) No Bar or Nightclub that sells alcoholic beverages for on-site consumption shall be located within 600 feet of residentially zoned property, public or private schools, religious facilities, or parks or playgrounds.
  - (iii) For purposes of this section, distances shall be measured between the closest property lines of the affected locations.
- (4) Operational standards – applicable to -off-site alcoholic beverage sales activities
- (i) Off-site alcoholic beverage sales activities shall be designed, constructed, and operated to conform to all of the following operational standards and alcohol sales limitations:
    - a. An establishment selling alcoholic beverages shall not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.
    - b. An establishment selling alcohol for off-site consumption shall be prohibited from selling single-serve alcoholic beverages, including, but not limited to, beer, malt liquor and alcoholic energy drinks of any size; wine of less than 750ml in size; distilled spirits of less than 375ml in size; or any other individual alcoholic beverage for single-serve consumption. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings. This restriction does not apply to existing establishments selling alcoholic beverages for off-site consumption with an active beer, wine or liquor license established prior to July 18, 2013 (the effective date of Ordinance 2299), unless the license has lapsed for more than 90 or more consecutive days, or was originally prohibited from selling single-serve alcoholic beverages through a Conditional Use Permit, a Finding of Public Convenience or Necessity and/or a through a Department of Alcoholic Beverage Control license.
    - c. An establishment selling alcoholic beverages shall not result in nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby,



- gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, sales to minors or police detentions and arrests.
- d. An establishment shall comply with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual city business license fees.
- e. The premises upkeep and operating characteristics shall be compatible with, and shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
- f. An establishment shall comply with the following public nuisance prevention measures:
1. Lighting: Exterior areas of the premises and adjacent parking lots shall be provided with sufficient lighting in a manner that provides adequate illumination for alcohol establishment patrons while not spilling onto surrounding residential and commercial properties. A photometric study may be required to demonstrate compliance.
  2. Litter: Adequate litter receptacles shall be provided on site and in the building. The premises shall be kept free of the accumulation of litter and shall be removed no less frequently than once each day the business is open.
  3. Loitering: The establishment's operators or employees shall be required to discourage loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so.
  4. Signage: There shall be no exterior advertising of alcoholic products, or tobacco and paraphernalia or similarly controlled products.
  5. Signs: The following signs shall be required to be prominently posted in a readily visible manner on an interior wall or fixture, and not on windows, in English and Spanish:
    - i. "California State Law prohibits the sale of alcoholic beverages to persons under 21 years of age."
    - ii. "No Loitering or Public Drinking."
    - iii. "It is illegal to possess an open container of alcohol in the vicinity of this establishment."
  6. Presentation of Documents: A copy of the conditions of approval and the California Department of Alcoholic Beverage Control license shall be required to be kept on the premises and presented to any enforcement officer or authorized state or county official upon request.
  7. Mitigating Alcohol Related Problems: The establishment shall be required to operate in a manner appropriate with mitigating alcohol

- related problems that negatively impact those individuals living or working in the neighborhood including but not limited to congregation of individuals, violence, drunkenness, public urination, solicitation, drug-dealing, drug use, and loud noise on or near the premises. Such mitigation measure shall include the operators and employees of the establishment maintaining adequate surveillance of the premises and nearby areas and contacting local law enforcement officials during the early stages of a disturbance.
8. Drug Paraphernalia: An off-site alcohol establishment shall be prohibited from selling drug/tobacco paraphernalia products as defined in Health and Safety Code sections 11014.5 and 11364.5. "Drug paraphernalia" means all equipment products and materials of any kind that are used intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the California Uniform Controlled Substances Act commencing with California Health and Safety Code section 11000.
  9. Prohibited Vegetation: Exterior vegetation shall not be planted or maintained that could be used as a hiding place for persons on the premises. Exterior vegetation may be planted and maintained in a manner that minimizes its use as a hiding place.
  10. Window Obstructions: To ensure a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance, no more than 15% of windows and entry doors shall be blocked by signs, vending machines, shelves, racks, storage, etc.
  11. Training: Each off-site operator and their employees selling alcohol shall complete the Responsible Beverage Service (RBS) Training component. To satisfy this requirement, a certified program must meet the standards of the Alcohol Beverage Control Responsible Beverage Service Advisory Board or other certifying/licensing body designated by the state of California. Proof of completion shall be kept on the premises and provided to City officials within 48 hours of a written request.
  12. Posting of Documents: A copy of these operational standards, any applicable ABC or city operating conditions, and any training requirements shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.
- (ii) Failure to comply with any of these requirements shall constitute grounds for revocation of a conditional use permit and/or business license. These above requirements, shall not be considered the sole grounds for revocation of a conditional use permit and/or business license.

ORDINANCE NO. 2324

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT ON NOVEMBER 10, 2014.

PASSED, APPROVED AND ADOPTED THIS 7<sup>th</sup> DAY OF OCTOBER 2014.

  
MAYOR OF THE CITY OF VICTORVILLE

ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

I, CAROLEE BATES, City Clerk of the City of Victorville and ex-officio Clerk to the City Council of said City, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2324 which was duly adopted at a meeting held on the 7<sup>th</sup> day of October 2014 by the following roll call vote, to wit:

AYES: Councilmembers Cox, Garcia, Kennedy, McEachron and Valles

NOES: None

ABSENT: None

ABSTAIN: None

  
CITY CLERK OF THE CITY OF VICTORVILLE