

Adopted: September 20, 2010
Effective: October 21, 2010

ORDINANCE NO. MC-1331

AN ORDINANCE OF THE CITY OF SAN BERNARDINO AMENDING SAN BERNARDINO MUNICIPAL CODE SECTION 19.06.030(2)(B) (DEVELOPMENT CODE) REQUIRING A CONDITIONAL USE PERMIT FOR NEW ALCOHOLIC BEVERAGE SALES ACTIVITIES AND ESTABLISHING AUTOMATIC DEEMED APPROVED STATUS FOR LEGAL NONCONFORMING ACTIVITIES AND REPEALING ORDINANCE NO. MC-1323.

The Mayor and Common Council of the City of San Bernardino do ordain as follows:

WHEREAS, Section 40(z) of the City Charter vests the Mayor and Common Council with the power to make and enforce all laws and regulations with respect to municipal affairs, subject only to the restrictions and limitations provided in the Charter or by State law; and

WHEREAS, research shows that areas with greater densities of on-site and off-site alcohol outlets also generally have higher rates of motor vehicle crashes, alcohol-related hospital admissions, pedestrian injury collisions, self-reported injury and drinking and driving among both young people and adults; and

WHEREAS, the relationship between alcohol outlet density and violent crime has been well documented; communities with 100 or more alcohol outlets and a population of 50,000 or more can expect an annual increase of 2.5 violent crimes each year for every alcohol outlet added in the area; and

WHEREAS, drunk driving arrests often take place at night, as bars are closing and highways become crowded with patrons who have been drinking; and

WHEREAS, studies indicate the rate of alcohol-related crashes can be reduced by responsible beverage service training programs, but the level of risk still is high when outlet density exceeds the acceptable levels of saturation; and

WHEREAS, nuisance and criminal activities such as drug dealing, public drunkenness, loitering and other behaviors that negatively impact neighborhoods occur with disproportionate frequency at and around the premises of on-site and off-site sale alcohol uses; and

WHEREAS, 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 citizens of the City of San Bernardino have complained to the San Bernardino Police Department about said nuisance and criminal activities; and

WHEREAS, there are many establishments in the City of San Bernardino selling alcoholic beverages that do not conform with the Development Code and, as a result, these establishments generate a disproportionate amount of public nuisance service calls for service for the San Bernardino Police Department; and

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

4 **WHEREAS**, the City of San Bernardino recognizes its responsibility to enforce the law and the
5 need for a partnership with alcoholic beverage sale establishments and the community to address illegal
6 activities in proximity to an alcoholic beverage sales establishment.

7 **WHEREAS**, the City wishes to require certain alcoholic beverage sale establishments to obtain
8 a conditional use permit to lawfully engage in the sale of alcoholic beverages within the City; and

9 **WHEREAS**, the conditional use permit will require the business owner to comply with
10 operational standards and training requirements as conditions of the conditional use permit; and

11 **WHEREAS**, the City wishes to designate each lawfully established and existing alcoholic
12 beverage sale business to be "deemed approved" to lawfully engage in the sale of alcoholic beverages
13 and be required to comply with operational standards as conditions to its deemed approved status; and

14 **WHEREAS**, the California Court of Appeals in *City of Oakland, et al. v. Superior Court, et al.*,
15 45 Cal.App.4th 740 (1996) held that a similar "deemed approved" ordinance was not preempted by state
16 laws regulating the sale of alcoholic beverages because the ordinance merely created an administrative
17 mechanism for enforcing nuisance and criminal laws that were applicable to all alcoholic beverage
18 establishments, even those in operation before the ordinance's effective date; and

19 **WHEREAS**, the Mayor and Common Council, by adopting this ordinance, have no intention to
20 regulate the sale of alcoholic beverages, but merely a desire to create an administrative mechanism
21 applicable to all alcoholic beverage establishments, to address the nuisance and criminal activities
22 described above; and

23 **NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN**
24 **BERNARDINO DO ORDAIN AS FOLLOWS:**

25 **SECTION 1. San Bernardino Municipal Code Section 19.06.030(2)(B) (Development Code) is**
26 **amended to read as follows:**

27 **Section 19.06.030(2)(B)**

28 **ARTICLE I – GENERAL**

SECTION I – TITLE AND PURPOSE

A. Title:

 (1) This ordinance shall be known as the Conditional Use Permit - Deemed Approved Alcoholic
Beverage Sales Regulations Ordinance.

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(2) This ordinance requires land use permits for newly established alcoholic beverage sales activities, confers deemed approved status for existing alcoholic beverage sales activities and provides standards and an administrative hearing process to review violations of those standards in order to protect the general health, safety, and welfare of the residents of the City of San Bernardino and to prevent nuisance activities where alcoholic beverage sales occur.

B. Purpose:

(1) To protect residential, commercial, industrial and civic areas and minimize the adverse impacts of nonconforming and incompatible uses; and

(2) To provide opportunities for alcoholic beverage sales establishments to operate in a mutually beneficial relationship to each other and to other commercial and civic services; and

(3) To provide mechanisms to address problems associated with the public consumption of alcoholic beverages such as litter, loitering, graffiti, unruly behavior and escalated noise levels; and

(4) To provide that alcoholic beverage sales establishments are not the source of undue public nuisances in the community; and

(5) To provide for properly maintained alcoholic beverage sales establishments so that the negative impacts generated by these activities are not harmful to the surrounding environment in any way; and

(6) To monitor Deemed Approved establishments to ensure they do not substantially change in mode or character of operation.

SECTION II – DEFINITIONS

The meaning and construction of these words and phrases, as set forth below, shall apply throughout, except where the context clearly indicates a different meaning or construction.

(A) “Administrator” means the Administrative Hearing Officer as identified in Section III.

(B) “Alcoholic Beverage” means alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits, 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 a ABC license.

(C) “Alcoholic Beverage Sales Activity” means the retail sale of alcoholic beverages for onsite or offsite consumption.

(D) “Alcoholic Beverage Sales Establishment” means an establishment where an alcoholic beverage sales activity occurs. Alcoholic beverage sales establishments include but are not limited to the following recognized types of establishments: liquor stores; beer and wine stores; convenience markets; markets; neighborhood specialty food markets; retail sales establishments; wine shops; service stations;

1 taverns; clubs; cocktail lounges, ballrooms, cabarets, dance bars, piano bars; billiard or game parlors,
2 bowling alleys; nightclubs, dance halls; cafes, bars, restaurants with bars; full-service restaurants; and
3 fast food establishments.

4 (E) "California Department of Alcoholic Beverage Control" or "ABC" refers to the department
5 of the State of California empowered to act pursuant to Article 20, section 22, of the California
6 Constitution and authorized to administer the provisions of the Alcoholic Beverage Control Act.

7 (F) "Conditions of Approval" means a requirement that must be carried out by the activity by:
8 (1) a new alcoholic beverage sales activity to exercise a land use permit; or (2) a legal nonconforming
9 alcoholic beverage sales activity to comply with deemed approved performance standards and to retain
10 its deemed approved status.

11 (G) "Deemed Approved Activity" means any Legal Nonconforming alcoholic beverage sales
12 activity, as defined in subsection (J). Such activity shall be considered a Deemed Approved activity as
13 long as it complies with the Deemed Approved Performance Standards set forth in Article III, Section
14 IV.

15 (H) "Deemed Approved Status" means the permitted use of land for a Deemed Approved
16 Activity. Deemed Approved status replaces Legal Nonconforming status with respect to Alcoholic
17 Beverage Sales Commercial Activity and remains in effect as long as it complies with the Deemed
18 Approved provisions and performance standards.

19 (I) "Illegal Activity" means an activity, which has been finally determined to be in
20 noncompliance with the Deemed Approved provisions and performance standards. Such an activity shall
21 lose its Deemed Approved status and shall no longer be considered a Deemed Approved activity.

22 (J) "Legal Nonconforming Alcoholic Beverage Sales Commercial Activity" or
23 "Legal Nonconforming Activity" means an Alcoholic Beverage Sales Commercial Activity which was a
24 nonconforming use pursuant to San Bernardino Municipal Code (Development Code) Chapter 19.62,
25 and for which a valid state of California Alcoholic Beverage Control license had been issued and used in
26 the exercise of the rights and privileges conferred by the license at a time immediately prior to the
27 effective date of the Deemed Approved Alcoholic Beverage Sale Regulations Ordinance. Such an
28 activity shall be considered a Deemed Approved Activity and shall no longer be considered a Legal
Nonconforming Activity.

(K) "Off-Sale Alcohol Outlet" means an establishment that conducts retail sales of Alcoholic
Beverages for consumption off the premises where sold.

(L) "On-Sale Alcohol Outlet" means an establishment that conducts retail sales of
Alcoholic Beverages for consumption on the premises where sold.

(M) "Operational Standards" means regulations for the business practice activities and land use
for locations with a Conditional Use Permit or those further requirements imposed to achieve these
goals. Operational Standards constitute requirements which must be complied with by an establishment
in order to maintain its Conditional Use Permit.

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(N) "Performance Standards" means regulations for the business practice activities and land use for locations with Deemed Approved status or those further requirements imposed to achieve these goals. Performance Standards constitute requirements which must be complied with by an establishment in order to retain its Deemed Approved status.

(O) "Permit" means a Conditional Use Permit issued pursuant to this ordinance.

(P) "Permittee" means the individual or entity that owns an alcoholic beverage sale establishment and to whom a Conditional Use Permit to operate an alcoholic beverage sale establishment has been issued by the City of San Bernardino.

(Q) "Premises" means the actual space within a building devoted to alcoholic beverage sales.

(R) "Restaurant" means a bona fide eating place whose predominant function is the service of food and where on-site sale of alcoholic beverages is incidental or secondary.

SECTION III – ADMINISTRATIVE HEARING OFFICER

The "Administrative Hearing Officer" shall have the same appointment and qualifications as that designated in San Bernardino Municipal Code Chapter 9.93, Administrative Civil Penalties; and shall conduct public hearings and make recommendations intended to encourage and achieve the compliance of particular alcoholic beverage sale establishments with the provisions of this Ordinance. This section is not intended to restrict the powers and duties otherwise pertaining to other City officers or bodies in the field of monitoring and ensuring the harmony of alcoholic beverage sale activities in the City. The Administrative Hearing Officers shall have the powers and duties assigned to them by the Development Code, and other San Bernardino Municipal Code ordinances.

SECTION IV - INSPECTION AND RIGHT OF ENTRY

The sale of alcoholic beverages is a closely regulated industry. The officials responsible for enforcement of the City Municipal Code or other provisions of the Development Code or their duly authorized representatives may enter on any site or into any structure open to the public for the purpose of investigation provided they shall do so in a reasonable manner whenever they have cause to suspect a violation of any provision of this ordinance or whenever necessary to the investigation of violations to the Conditions of Approval or Deemed Approved performance standards prescribed in these regulations. If an owner, occupant or agent refuses permission to enter, inspect or investigate, premises which are not open to the public, the officials or their representatives may seek an inspection warrant under the provisions of California Code of Civil Procedure section 1822.50 et. seq. All such inspections shall be conducted in compliance with the Fourth Amendment to the United States Constitution.

SECTION V - SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Mayor and Common Council hereby declare that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more of the sections subsections, sentences, clauses or phrases may be declared invalid.

ARTICLE II – CONDITIONAL USE PERMITS FOR NEW ALCOHOLIC BEVERAGE SALES ACTIVITIES

SECTION I – PURPOSE

The general purposes of these regulations are to protect and promote the public health, safety, comfort, convenience, prosperity and general welfare by requiring consideration and approval of a Conditional Use Permit before a new alcoholic beverage sales activity will be permitted in any land use zoning district of the City and by requiring all new alcoholic beverage sales activities to comply with the operational standards in this ordinance and to achieve the following objectives:

(A) Protect surrounding neighborhoods from the harmful effects attributable to the sale of alcoholic beverages and to minimize the adverse impacts of nonconforming and incompatible uses.

(B) Encourage businesses selling alcoholic beverages to operate in a manner that is mutually beneficial to other such businesses and other commercial and civic activities.

(C) Provide a mechanism to address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels.

(D) Ensure that businesses selling alcoholic beverages are not the source of undue public nuisances in the community.

(E) Ensure that sites where alcoholic beverages are sold are properly maintained so that negative impacts generated by these activities are not harmful to the surrounding environment in any way.

This Article alone does not allow or permit alcoholic beverage sales activities, but only applies to these activities where otherwise allowed or permitted within an involved applicable land use zoning district. This Article does not authorize alcoholic beverage sales activities in any land use district where they are not otherwise allowed or permitted by the applicable involved zoning district's regulations.

The provisions of this ordinance are intended to compliment the State of California alcohol-related laws. The city does not intend to replace or usurp any powers vested in the California Department of Alcoholic Beverage Control.

SECTION II – REQUIREMENT

Notwithstanding any other provisions of this Code, no new on-site or off-site alcoholic beverage sales activity may be established unless a Conditional Use Permit is first obtained in accordance with the requirements of this Article. The following uses are exempt from this requirement to obtain a Conditional Use Permit:

(A) Sit-down restaurants whose predominant function is the service of food and where the on-site sale of alcoholic beverages is incidental or secondary.

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1 (B) Establishments containing 10,000 square feet or more, including but not limited to
2 supermarkets and drug stores, which do not sell alcoholic beverages as the principal business.

3 (C) Establishments, whose applications have been deemed complete prior to the effective date
4 of this Ordinance by the Community Development Department.

5 (D) Temporary uses issued a Temporary License by the California Department of Alcoholic
6 Beverage Control and established in compliance with all City laws and regulations.

7 **SECTION III – LOCATIONAL RESTRICTIONS**

8 (A) Unless otherwise exempted under subsections B – H, a new alcoholic beverage sales activity
9 is not permitted within 500 feet of any of the following locations:

- 10 1. A public or private state licensed or accredited school
- 11 2. A public park, playground, recreational area, or youth facility, including a nursery
12 school, preschool, or day-care facility
- 13 3. A place of worship or religious institution
- 14 4. A hospital
- 15 5. An alcohol or other drug abuse recovery or treatment facility
- 16 6. A county social service office.

17 (B) Establishments containing 10,000 square feet or more, including but not limited to
18 supermarkets and drugstores, which do not sell alcoholic beverages as the principal business are exempt
19 from these locational restrictions.

20 (C) Sit down restaurants whose predominant function is the service of food and where the on-site
21 sale of alcoholic beverages is incidental or secondary are exempt from these locational restrictions. An
22 incidental bar or lounge shall be allowed for the convenience of dining patrons. (Establishments which
23 are primarily a bar or lounge or have a bar or lounge area as a principal or independent activity are not
24 included in this exemption.)

25 (D) Other establishments for on-site consumption of alcohol may be exempted from the
26 locational restrictions, subject to evaluation of site-specific conditions through the Conditional Use
27 Permit review process and considering recommendations from the Police Department.

28 (E) Specialty retail establishments that offer unique product lines or variety of selection
warranting a finding of public convenience or necessity are exempt from the locational restrictions.

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1 (F) An automobile service station convenience store that meets the location criteria of Section
2 19.06.030(2)(T) may be exempted from these locational restrictions, subject to evaluation of site-
3 specific conditions through the Conditional Use Permit review process and considering
4 recommendations from the Police Department.

5 (G) A fraternal organization or veterans club may be exempted from the locational restrictions,
6 subject to evaluation of site-specific conditions through the Conditional Use Permit review process and
7 considering recommendations from the Police Department.

8 (H) Temporary uses issued a Temporary License by the California Department of Alcoholic
9 Beverage Control and established in compliance with all City laws and regulations are exempt from the
10 locational restrictions.

11 (I) The following location conditions shall be considered in the review of Conditional Use
12 Permit applications, and may be grounds for denial based on potential adverse effects to the public
13 interest, health, safety or convenience:

- 14 1. A location within a crime reporting district, or within 500 feet of a crime reporting
15 district, where the general crime rate exceeds the city-wide general crime rate by more
16 than 20 percent.
- 17 2. A location where the new alcoholic beverage sales activity would be within 500 feet from
18 an existing alcoholic beverage sales activity, or would lead to the grouping of more than
19 four alcoholic beverage sales activities within a 1,000 foot radius from the new alcoholic
20 beverage sales activity.

21 **SECTION IV – OPERATIONAL STANDARDS**

22 All new alcoholic beverage sales activities shall be designed, constructed, and operated to
23 conform to all of the following operational standards:

24 (A) That it does not result in adverse effects to the health, peace or safety of persons residing or
25 working in the surrounding area.

26 (B) That it does not jeopardize or endanger the public health or safety of persons residing or
27 working in the surrounding area.

28 (C) That it does not result in repeated 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, excessive littering, loitering, graffiti,
illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic
violations, curfew violations, lewd conduct, or police detentions and arrests.

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(D) That it complies with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the California Department of Alcoholic Beverage Control ("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 registration fees and annual use permit fees.

(E) That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

(F) That the owners and all employees of the alcohol beverage sales establishment who are involved in the sale of alcoholic beverages complete an approved course in "Responsible Beverage Sales" (RBS) within sixty (60) days of hire for employees hired after the passage of this ordinance or within 6 months of the passage of this ordinance for existing employees. 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.

(G) 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.

SECTION V – ADMINISTRATION

The San Bernardino City Planning Commission shall administer Conditional Use Permits.

SECTION VI – PERMIT APPLICATION

Any person, association, partnership, corporation or other entity desiring to obtain an alcoholic beverage sales activity Conditional Use Permit shall file an application with the City of San Bernardino Community Development Department to forward to the San Bernardino City Planning Commission on a form provided by the City. The application shall be accompanied by a nonrefundable application processing fee in an amount established by a resolution of the Mayor and Common Council.

The application for a Conditional Use Permit shall include, but not be limited to the following information:

(A) The name, address and telephone number of the applicant. If the applicant is a corporation, the applicant shall set forth the name of the corporation exactly as shown in its articles of incorporation. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible management officer.

(B) The name, address, and telephone number of each lender or share holder with a five percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid.

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2 (C) The name, address, and telephone number of the person who shall manage and operate the
3 establishment for which the permit is requested.

4 (D) The name, address, and telephone number of all existing schools, parks, playgrounds or
5 recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug abuse
6 recovery or treatment facilities or county social service offices within 500 feet of the proposed alcoholic
7 beverage sales activity establishment.

8 (E) The name, address, and telephone number of all alcoholic beverage sale activities within 500
9 feet of the proposed alcoholic beverage sales activity establishment and within a 1000 foot radius from
10 the proposed alcoholic beverage sales activity establishment.

11 (F) The name, address, and telephone number of a person authorized to accept service of legal
12 notices.

13 (G) The proposed business name of the alcoholic beverage sales activity establishment and
14 description of all operating aspects of the proposed business.

15 (H) The type of ABC license the applicant is seeking for the alcoholic beverage sales activity
16 establishment.

17 (I) Any other information reasonably necessary to accomplish the purposes of this ordinance.

18 (J) The Planning Commission may refer the application to other City departments to determine
19 whether the premises where the alcoholic beverage sales activity establishment will be located, complies
20 with the City's building, health, zoning and fire ordinances or other applicable ordinances or laws. City
21 departments may conduct an inspection of the premises to determine compliance with the ordinances
22 and other laws they administer. City departments may prepare reports summarizing their inspections and
23 recommending whether to approve or deny the application based on their inspections.

24 **SECTION VII – ACTION ON PERMIT APPLICATION**

25 The Planning Commission shall approve issuance of the Conditional Use Permit to allow a new
26 alcoholic beverage sales activity upon making the following findings:

27 (A) The proposed alcoholic beverage sales activity establishment is located in a zoning district in
28 which the establishment is a permitted use.

(B) A finding of "public convenience and necessity" (Business and Professions Code Section
23958.4(b) (2)), if the activity will be located in an area that has been determined by the State of
California Department of Alcoholic Beverage Control to have an undue concentration of licenses as
defined in Business and Professions Code Section 23958.4(a).

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(C) A finding that the alcoholic beverage sales activity will not aggravate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcoholic beverage sales to minors, noise and littering.

(D) The proposed establishment will not detrimentally affect nearby neighborhoods considering the distance of the alcohol establishment to residential buildings, schools, parks, playgrounds or recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug abuse recovery or treatment facilities, county social service offices, or other alcoholic beverages sales activity establishments.

(E) The proposed establishment will otherwise be compatible with existing and potential uses within the general area.

(F) The proposed establishment is not located in what has been determined to be a high-crime area or where a disproportionate number of police service calls occur.

(G) The use of the proposed establishment is consistent with the General Plan.

SECTION VIII – CONDITIONS OF APPROVAL

Conditions of Approval that may be imposed include but are not limited to the following:

(A) Prohibited Products: To discourage nuisance activities, an Off-Sale Alcohol Outlet may be prohibited from selling one or more of the following products:

(1) Wine or distilled spirits in containers of less than 750 milliliters.

(2) Malt beverage products with alcohol content greater than five and one-half percent by volume.

(3) Wine with an alcoholic content greater than 14 percent by volume unless in corked bottles and aged at least two years.

(4) Beer or malt liquor sold individually in containers of 40 ounces or less.

(5) Containers of beer or malt liquor not in their original factory packages of six-packs or greater.

(6) Distilled spirits in bottles or containers smaller than 375 milliliters.

(7) Cooler products, either wine- or malt beverage- based, in less than four-pack quantities.

(B) Pay Telephones: Pay telephones on the site of the establishment shall be required to be of the type that only allow outgoing calls and shall be located in a visible and well-lighted location.

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1 (C) Program: A “complaint response community relations” program established and maintained
2 by the establishment conducting the Deemed Approved Activity may be required. The program may
3 include the following:

4 (1) Posting at the entry of the establishment providing the telephone number for the area
5 commander of the local law enforcement substation to any requesting individual.

6 (2) Coordinating efforts with the police department to monitor community complaints about the
7 establishment activities.

8 (3) Having a representative of the establishment meet with neighbors or the applicable
9 neighborhood association on a regular basis and at their request attempt to resolve any neighborhood
10 complaints regarding the establishment.

11 (D) Activities: If appropriate the following activities may be prohibited on the premises: pool or
12 billiard tables, football or pinball games, arcade style video or electronic games, and coin-operated
13 amusement devices.

14 (E) Chilled Alcoholic Beverages: An Off-Sale Alcohol Outlet may be prohibited from
15 maintaining refrigerated or otherwise chilled alcoholic beverages on the premises.

16 (F) Hours of Operation: In an Off-Sale Alcohol Outlet, the sale of alcoholic beverages may be
17 restricted to certain hours of each day of the week unless limited further by the State of California
18 Department of Alcoholic Beverage Control.

19 (G) Cups: In Off-Sale Alcohol Outlets, the sale or distribution to the customer of paper or plastic
20 cups in quantities less than their usual and customary packaging may be prohibited.

21 (H) Signs: The following signs shall be required to be prominently posted in a readily visible
22 manner on an interior wall or fixture, and not on windows, in English, Spanish and the predominant
23 language of the patrons:

24 (1) “California State Law prohibits the sale of alcoholic beverages to
25 persons under 21 years of age.”

26 (2) "No Loitering or Public Drinking."

27 (3) “It is illegal to possess an open container of alcohol in the vicinity of this establishment.”

28 (I) 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 City Enforcement Officer or authorized state or county official upon
request.

(J) 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

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1 living or working in the neighborhood including but not limited to sales to minors, the congregation of
2 individuals, violence on or near the premises, drunkenness, public urination, solicitation, drug-dealing,
3 drug use, loud noise and litter.

4 (K) Drug Paraphernalia: An Off-Sale Alcohol Outlet shall be prohibited from selling
5 drug/tobacco paraphernalia products as defined in Health and Safety Code sections
6 11014.5 and 11364.5. "Drug Paraphernalia" means all equipment products and materials of any kind
7 that are used intended for use or designed for use in planting, propagating, cultivating, growing,
8 harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing,
9 analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or
10 otherwise introducing into the human body a controlled substance in violation of the California Uniform
11 Controlled Substances Act commencing with California Health and Safety Code section 11000.

12 (L) Loitering: The establishment's operators or employees shall be required to discourage
13 loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law
14 enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested
15 to leave fail to do so.

16 (M) Security Cameras: At least two 24-hour time lapse security cameras may be required to be
17 installed and properly maintained on the exterior of the building at locations recommended by the Police
18 Department. All criminal and suspicious activities recorded on this surveillance equipment must be
19 reported to local law enforcement. To the extent allowed by law, the establishment operators may be
20 required to provide any tapes or other recording media from the security cameras to the Police
21 Department. [Request Police Dept. input]

22 (N) Security Guards: An establishment may be required to retain a specified number of security
23 guards. The number of security guards shall vary based upon the specific facts and circumstances of
24 each establishment site and operation. All security guards shall have all required state and City permits
25 and licenses.

26 (O) Prohibited Vegetation: Exterior vegetation shall not be planted or maintained that could be
27 used as a hiding place for persons on the premises. Exterior vegetation shall be planted and maintained
28 in a manner that minimizes its use as a hiding place.

(P) Window Obstructions: No more than 25% of windows or clear doors shall bear advertising
of any sort, and all advertising signage shall be placed and maintained in a manner that ensures that law
enforcement personnel have 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.

1 **SECTION IX – APPEALS FROM A DETERMINATION ON AN APPLICATION FOR**
2 **PERMIT**

3 Any applicant or other person aggrieved by a decision of the Planning Commission on an
4 application for a Conditional Use Permit required by this Article may appeal the decision to the Mayor
and Common Council pursuant to Development Code Chapter 19.52.

5 **SECTION X – GROUNDS FOR CONDITIONAL USE PERMIT SUSPENSION OR**
6 **REVOCATION**

7 An alcoholic beverage sales activity establishment Conditional Use Permit may be suspended by
8 the Planning Commission for up to one year or revoked after a noticed public hearing held pursuant to
9 Development Code Chapter 19.52, for failure to comply with Operational Standards, training
requirements or conditions imposed through the Conditional Use Permit.

10 Notice of intention to suspend or revoke shall be in writing and shall state the grounds therefore.
11 Notice shall be mailed by U.S. First-Class Mail and Certified Mail Return Receipt Requested at least 10
12 days before the date of the hearing.

13 **SECTION XI – INVESTIGATIVE PROCEDURES OF POTENTIAL VIOLATIONS OF**
14 **CONDITIONS OF APPROVAL**

15 The City shall appoint an Administrative Hearing Officer pursuant to San Bernardino Municipal
16 Code Chapter 9.93, to conduct hearings, make findings and determine whether violations of this Article,
17 including the Operational Standards and Conditions of Approval, as well as whether undue negative
impacts or public nuisance activities have occurred, are occurring or are likely to occur in the future.
18 The assigned Administrative Hearing Officer shall exercise all powers relating to the conduct of the
administrative hearing pursuant to San Bernardino Municipal Code Chapter 9.93.

19 Upon the City's receipt of a complaint from the public, Police Department, City official or any
20 other interested person that a Conditional Use Permit activity is in violation of the Operational Standards
and/or Conditions of Approval set forth in this Article, the following procedure shall be followed:

21 (A) A City Enforcement Officer (any Police Officer or other City Enforcement Officer as listed
22 in San Bernardino Municipal Code Chapter 9.93) shall assess the nature of the complaint and its validity
23 by conducting an on-site observation and inspection of the premises to assess the activity's compliance
with Operational Standards and/or Conditions of Approval.

24 (B) If the Enforcement Officer determines that the activity is in violation of the Operational
25 Standards and/or Conditions of Approval, the Enforcement Officer may issue an Administrative Citation
or an Administrative Civil Penalties Notice, which then may be subject to a hearing by the
26 Administrative Hearing Officer pursuant to San Bernardino Municipal Code Chapter 9.92 or 9.93.

27 (C) Any Administrative Citation or Administrative Civil Penalties Notice issued under this
28 section shall be issued, processed, and enforced in compliance with all of the provisions of San

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1 Bernardino Municipal Code Chapter 9.92 and 9.93, unless otherwise expressly provided by this
2 Ordinance.

3 (D) The Administrative Hearing Officer shall determine whether the activity is in compliance
4 with the operational standards and/or Conditions of Approval. Based on this determination, the Hearing
5 Officer may continue the Conditional Use permit status for the use in question, may impose new
6 conditions on the activity, may impose Administrative Civil Penalties pursuant to San Bernardino
7 Municipal Code Chapter 9.93 for violations of the Operational Standards and/or Conditions of Approval
8 and may recommend that the Planning Commission suspend or revoke the activity's Conditional Use
9 Permit. If the Hearing Officer determines instead to impose new conditions on the activity, such
10 conditions shall be based upon the information then before the Hearing Officer. In reaching a
11 determination as to whether a use has violated the Operational Standards or Conditions of Approval, or
12 as to the appropriateness of imposing additional or amended conditions on a use, recommending
13 suspension or revocation of a use, assessing administrative penalties, or the amount of Administrative
14 Civil Penalties to assess, the Hearing Officer may consider:

11 1. The length of time the activity has been out of compliance with the Operational
12 Standards and/or Conditions of Approval.

13 2. The impact of the violation of the Operational Standards and/or Conditions of
14 Approval on the community.

15 3. Any information regarding the owner's efforts to remedy the violation of the
16 operational standards and/or Conditions of Approval.

17 (E) "Efforts to Remedy" shall include, but are not limited to:

18 1. Timely calls to the Police Department that are placed by the owner of the Deemed
19 Approved activity, his or her employees, or agents.

20 2. Requesting that those persons engaging in activities causing violations of the
21 Operational Standards and or Conditions of Approval cease those activities, unless the owner of the
22 activity, or his or her employees or agents feels that their personal safety would be threatened in making
23 that request.

24 3. Making improvements to the subject property or operations, including but not limited
25 to the installation of lighting sufficient to illuminate the area within the use's property line, the
26 installation of security cameras, the clearing of window obstructions, the cleaning of sidewalks and the
27 abatement of graffiti within three days.

28 (F) If in the judgment of the Administrative Hearing Officer, the operations of the owner of the
activity constitute a nuisance, the owner is unable or unwilling to abate the nuisance and the nuisance is
shown to be a threat to the public health and safety of the surrounding neighborhood, the Hearing
Officer may recommend that the Planning Commission suspend or revoke the activity's Conditional Use
permit. All determinations, decisions, and conditions made or imposed regarding the activity shall run
with the land.

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(G) The decision of the Administrative Hearing Officer shall become final and conclusive and shall not be subject to appeal to the Mayor and Common Council. Once the decision of the Administrative Hearing Officer becomes final, the time in which judicial review of the decision must be sought shall be governed by California Code of Civil Procedure Section 1094.6, or other applicable State Law.

SECTION XII – APPEAL FROM SUSPENSION OR REVOCATION OF CONDITIONAL USE PERMIT

Any applicant or other person aggrieved by a decision of the Planning Commission from a suspension or revocation of a Conditional Use Permit may appeal the decision to the Mayor and Common Council pursuant to Development Code Chapter 19.52.

ARTICLE III – STANDARDS AND PROCEDURES FOR EXISTING DEEMED APPROVED ALCOHOLIC BEVERAGE SALES ACTIVITIES

SECTION I – PURPOSE

The purposes of these regulations are to protect and promote the public health, safety, comfort, convenience, prosperity and general welfare by requiring that alcoholic beverage sales activities that are legal nonconforming activities comply with the Deemed Approved performance standards in this Chapter and to achieve the following objectives:

(A) Protect surrounding neighborhoods from the harmful effects attributable to the sale of alcoholic beverages and to minimize the adverse impacts of nonconforming and incompatible uses.

(B) Encourage businesses selling alcoholic beverages to operate in a manner that is mutually beneficial to other such businesses and other commercial and civic activities.

(C) Provide a mechanism to address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels.

(D) Ensure that businesses selling alcoholic beverages are not the source of undue public nuisances in the community.

(E) Ensure that sites where alcoholic beverages are sold are properly maintained so that negative impacts generated by these activities are not harmful to the surrounding environment in any way.

SECTION II – APPLICABILITY

The Deemed Approved alcoholic beverage sales regulations shall apply to all alcoholic beverage sales activities for on-site or off-site consumption existing and operating within the City on the effective date of this ordinance.

SECTION III – AUTOMATIC DEEMED APPROVED STATUS

All Alcoholic Beverage Sales Commercial Activities that were Legal Nonconforming Activities, on the effective date of this ordinance, whether or not previously granted a Conditional Use Permit by the City, shall automatically become Deemed Approved Activities as of the effective date of this ordinance and shall no longer be considered Legal Nonconforming Activities.

Each deemed approved activity shall retain its Deemed Approved status as long as it complies with the performance standards of this ordinance.

The occurrence of any of the following shall terminate the Deemed Approved status of the alcoholic beverage sales activity after notice and a hearing in accordance with Section VI below, and require the issuance of a Conditional Use Permit in order to continue the alcoholic beverage sales activity:

(A) An existing alcoholic beverage sales activity changes its activity so that ABC requires a different type of license.

(B) There is a substantial change of the mode or character of operation.

(C) As used herein, the phrase “substantial change of the mode or character of operation” includes but is not be limited to the following:

1. The off-site alcoholic beverage sales activity establishment substantially increases the floor or land area or shelf space devoted to the display or sales of any alcoholic beverage.

2. The on-site alcoholic beverage sales activity establishment substantially increases the floor or land area or shelf space devoted to the display, sales or service of any alcoholic beverage.

3. The off-site or on-site alcoholic beverage sales activity establishment substantially expands the sale or service of any alcoholic beverages and/or substantially increases the number of customer seats primarily devoted to the sale or service of any alcoholic beverages.

4. The off-site or on-site alcoholic beverage sales activity establishment extends the hours of operation.

5. The alcoholic beverage sales activity establishment proposes to reinstate alcohol sales after the ABC license has been either revoked or suspended for a period 90 days or greater by ABC.

6. The alcoholic beverage sales activity voluntarily discontinues active operation for more than 90 consecutive days or ceases to be licensed by the ABC.

(D) A substantial change of the mode or character of operation shall not include:

1. Re-establishment, restoration or repair of an existing alcoholic beverage sales activity on the same premises after the premises have been rendered totally or partially inaccessible by a riot,

1 insurrection, toxic accident or act of God, provided that the re-establishment, restoration or repair does
2 not increase the sales or service of any alcoholic beverage, extend the hours of operation of any
3 establishment or add to the capacity, floor or land area or shelf space devoted to alcoholic beverages of
any establishment that sells or serves any alcoholic beverages.

4 2. Temporary closure for not more than ninety days in cases of vacation or illness or for
5 purposes of repair, renovation, or remodeling if that repair, renovation, or remodeling does not change
6 the nature of the premises and does not increase the sales or service of any alcoholic beverage, extend
7 the hours of operation of any establishment, or add to the capacity, floor or land area, or shelf space
devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.

8 (E) Discontinuance. Once it is determined by the City that there has been a discontinuance of
9 active operation for 90 consecutive days or a cessation of ABC licensing, it may be resumed only upon
10 the granting of a Conditional Use Permit as provided in Article II. The property owner shall be notified
11 by the City of the termination of the Deemed Approved status and shall be informed of the property
owner's right to appeal the City's decision to the Administrative Hearing Officer.

12 **SECTION IV – DEEMED APPROVED PERFORMANCE STANDARDS**

13 The provisions of this section shall be known as the Deemed Approved performance standards.
14 The purpose of these standards is to control dangerous or objectionable environmental effects of
15 alcoholic beverage sales activities. These standards shall apply to all Deemed Approved alcoholic
beverage sales activities that hold Deemed Approved status pursuant to this Article.

16 An alcoholic beverage sales activity ("Alcohol Outlet") shall retain its Deemed Approved status
17 only if it conforms to all of the following Deemed Approved performance standards:

18 (A) The Alcohol Outlet shall not cause adverse effects to the health, peace or safety of persons
19 residing or working in the surrounding area.

20 (B) The Alcohol Outlet shall not jeopardize or endanger the public health or safety of persons
21 residing or working in the surrounding area.

22 (C) The Alcohol Outlet shall not allow repeated nuisance activities within the premises or in
23 close proximity of the premises, including but not limited to disturbance of the peace, illegal drug
24 activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of
stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering,
graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic
violations, curfew violations, or lewd conduct.

25 (D) The Alcohol Outlet shall comply with all provisions of local, state or federal laws,
26 regulations or orders, including but not limited to those of the ABC, California Business and Professions
27 Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant
28 to applicable laws, regulations or orders. This includes compliance with annual City business
registration fees.

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1 (E) The Alcohol Outlet's upkeep and operating characteristics shall be compatible with and not
2 adversely affect the livability or appropriate development of abutting properties and the surrounding
3 neighborhood.

4 (F) A copy of these performance standards, any applicable ABC or City operating conditions,
5 and any training requirements shall be posted in at least one prominent place within the interior of the
6 establishment where it will be readily visible and legible to the employees and patrons of the
7 establishment.

8 (G) The owners and all employees of the alcohol beverage sales establishment involved in the
9 sale of alcoholic beverages shall complete an approved course in "Responsible Beverage Sales" (RBS)
10 within 60 days of hire for employees hired after the passage of this ordinance or within six months of the
11 passage of this ordinance for existing employees. To satisfy this requirement, a certified program must
12 meet the standards of the California Coordinating Council on Responsible Beverage Service (CCC/RBS)
13 or other certifying/licensing body designated by the State of California.

14 **SECTION V – NOTIFICATION TO OWNERS OF ESTABLISHMENTS CONDUCTING** 15 **DEEMED APPROVED ACTIVITIES**

16 The City's Community Development Department shall notify the owner of each Deemed
17 Approved activity, and also, if not the same, any property owner at the address shown on the City's
18 property tax assessment records, of the activity's Deemed Approved status. The notice shall be sent by
19 U.S. First Class Mail and Certified Mail Return Receipt Requested and shall include a copy of the
20 performance standards in this Article with the requirement that they be posted in a conspicuous and
21 unobstructed place visible from the entrance of the establishment for public review. This notice shall
22 also provide that the activity is required to comply with all performance standards, and that the activity
23 is required to comply with all other aspects of the Deemed Approved regulations. Should the notice be
24 returned, then the notice shall be sent via regular U.S. Mail. Failure of any person to receive notice given
25 pursuant to this Article shall not affect the Deemed Approved status of the activity.

26 **SECTION VI - DEEMED APPROVED STATUS PROCEDURES**

27 The City shall appoint an Administrative Hearing Officer pursuant to San Bernardino Municipal
28 Code Chapter 9.93 to conduct hearings, make findings and determine whether violations of this Article,
including the Deemed Approved performance standards or Conditions of Approval, undue negative
impacts or public nuisance activity, have occurred, are occurring, or are likely to occur in the future. The
assigned Administrative Hearing Officer shall exercise all powers relating to the conduct of the
administrative hearing pursuant to San Bernardino Municipal Code Chapter 9.93.

Upon the City's receipt of a complaint from the public, Police Department, City official or any
other interested person that a Deemed Approved use is in violation of the performance standards set
forth in this Article, the following procedure shall be followed:

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1 (A) A City Enforcement Officer shall assess the nature of the complaint and its validity by
2 conducting an on-site observation and inspection of the premises to assess the activity's compliance with
3 performance standards.

4 (B) If the Enforcement Officer determines that the Deemed Approved activity is in violation of
5 the performance standards, the Enforcement Officer may issue an Administrative Citation or an
6 Administrative Civil Penalties Notice, which then may be subject to a hearing by the Administrative
7 Hearing Officer pursuant to San Bernardino Municipal Code Chapters 9.92 or 9.93.

8 (C) Any Administrative Citation or Administrative Civil Penalties Notice issued under this
9 section shall be issued, processed, and enforced in compliance with all of the provisions of San
10 Bernardino Municipal Code Chapter 9.92 and 9.93, unless otherwise expressly provided by this
11 Ordinance.

12 (D) The Administrative Hearing Officer shall determine whether the Deemed Approved activity
13 is in compliance with the performance standards. Based on this determination, the Hearing Officer may
14 continue the Deemed Approved status for the use in question, may impose Administrative Civil
15 Penalties for violations of the performance standards pursuant to San Bernardino Municipal Code
16 Chapter 9.93, may impose such reasonable conditions, including but not limited to the conditions listed
17 in Article II, Section VIII above, as are in the judgment of the Hearing Officer necessary to ensure
18 compliance with the performance standards and may suspend or revoke the Deemed Approved activity's
19 Deemed Approved status. If the Hearing Officer determines instead to impose further, new conditions
20 on the Deemed Approved activity, such conditions shall be based upon the information then before the
21 Hearing Officer. In reaching a determination as to whether a use has violated the performance standards,
22 or as to the appropriateness of imposing additional or amended conditions on a use, suspending or
23 revoking a use, assessing Administrative Civil Penalties, or the amount of Administrative Civil Penalties
24 to assess, the Hearing Officer may consider:

25 1. The length of time the Deemed Approved activity has been out of compliance with the
26 performance standards.

27 2. The impact of the violation of the performance standard(s) on the community.

28 3. Any information regarding the owner of the Deemed Approved activity's efforts to
remedy the violation of the performance standard(s).

(E) "Efforts to Remedy" shall include, but are not limited to:

1. Timely calls to the Police Department that are placed by the owner of the Deemed
Approved activity, his or her employees, or agents.

2. Requesting that those persons engaging in activities causing violations of the
performance standard(s) cease those activities, unless the owner of the Deemed Approved activity, or his
or her employees or agents feels that their personal safety would be threatened in making that request.

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1 3. Making improvements to the Deemed Approved activity's property or operations,
2 including but not limited to the installation of lighting sufficient to illuminate the area within the use's
3 property line, the installation of security cameras, clear unobstructed windows, clean sidewalks and
4 graffiti abated within three days.

5 (F) If in the judgment of the Administrative Hearing Officer, the operations of the owner of the
6 deemed Approved activity constitute a nuisance, the owner is unable to abate the nuisance and the
7 nuisance is shown to be a threat to the public health and safety of the surrounding neighborhood, the
8 Hearing Officer may suspend or revoke the activity's Deemed Approved status. Any continued
9 operation of the business shall require a Conditional Use Permit approved by the Planning Commission.
10 All determinations, decisions, and conditions made or imposed regarding the Deemed Approved activity
11 shall run with the land.

12 (G) The decision of the Administrative Hearing Officer shall become final and conclusive and
13 shall not be subject to appeal to the Mayor and Common Council. Once the decision of the
14 Administrative Hearing Officer becomes final as provided in this Chapter, the time in which judicial
15 review of the decision must be sought shall be governed by California Code of Civil Procedure Section
16 1094.6, or other applicable State Law.

17 **ARTICLE IV - ALCOHOLIC BEVERAGE SALES ACTIVITY PENALTIES**

18 (A) Any person who violates, causes or permits another person to violate any provision of this
19 ordinance is guilty of either an infraction or misdemeanor. Any person convicted of either an infraction
20 or misdemeanor under the provision of this ordinance shall be punished by a fine, imprisonment or both
21 according to Chapter 1.12 of the San Bernardino Municipal Code.

22 (B) Separate Offenses for Each Day: Any violator shall be guilty of a separate offense for each
23 and every day during any portion of which any violation of any provision of these regulations is
24 committed, continued, permitted, or caused by such violator and shall be punishable accordingly.

25 (C) Any Violation a Public Nuisance: In addition to the penalties provided in this section, any
26 use or condition caused or permitted to exist in violation of any of the provisions of these regulations
27 shall be and is declared to be a public nuisance and may be abated as such by the City.

28 (D) Injunction as Additional Remedy: Any violation of any provision of these regulations shall
be and is declared to be contrary to the public interest and shall at the discretion of the City, create a
cause of action for injunctive relief.

(E) Administrative Civil Penalties: In addition to any other penalties provided in this section,
\$1,000.00 in Administrative Civil Penalties shall be imposed for each and every offense and for each
and every day during any portion of which any violation of any provision of these regulations is
committed, continued, permitted, or caused by such violator:

 (F) The City shall bill all persons liable for these Administrative Civil Penalties by mail showing
the itemized costs and requesting payment. Payment of the penalties shall be due within thirty 30 days of

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the date the bill is deposited in the Mail. If full payment is not received within the required time for payment, the bill will be delinquent and all persons liable for the penalties shall be charged interest at the maximum legal rate from the date the payment period expires and a further civil penalty in the amount of \$100.00 per day. The delinquent costs may be placed as a lien against the property or collected by the City in any manner authorized bylaw and are recoverable in a civil action filed by the City in a court of competent jurisdiction.

(G) Liability for Expenses: In addition to the punishment provided by law, a violator is liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in correction abatement and prosecution of the violation. Re-inspection fees to ascertain compliance with previously noticed or cited violations shall be charged against the owner of the establishment conducting the Deemed Approved Activity or owner of the property where the establishment is located. The Enforcement Officer shall give the owner or other responsible party of such affected premises a written notice showing the itemized cost of such chargeable service and requesting payment thereof. Should the bill not be paid in the required time, the charges shall be placed as a lien against the property.

SECTION 2. This Ordinance is based upon the recitals and findings set forth above, and the accompanying Staff Report and its attachments to this Ordinance, and is adopted pursuant to the authority granted to the City of San Bernardino in Article 11, Section 7 of the California Constitution, and Section 40(z) of the Charter of the City of San Bernardino.

SECTION 3. Compliance with the California Environmental Quality Act: The Mayor and Common Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, *California Code of Regulations*, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 4. Severability: If any section, subsection, subdivision, sentence, or clause or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The Mayor and Common Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 5. Ordinance No. MC-1323, adopted by the Mayor and Common Council on May 3, 2010, is hereby repealed.

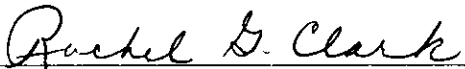
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AN ORDINANCE OF THE CITY OF SAN BERNARDINO AMENDING SAN BERNARDINO MUNICIPAL CODE SECTION 19.06.030(2)(B) (DEVELOPMENT CODE) REQUIRING A CONDITIONAL USE PERMIT FOR NEW ALCOHOLIC BEVERAGE SALES ACTIVITIES AND ESTABLISHING AUTOMATIC DEEMED APPROVED STATUS FOR LEGAL NONCONFORMING ACTIVITIES AND REPEALING ORDINANCE NO. MC-1323.

I HEREBY CERTIFY that the foregoing Ordinance was duly adopted by the Mayor and Council of the City of San Bernardino at a joint regular meeting thereof, held on the 20th day of September, 2010, by the following vote, to wit:

COUNCIL MEMBERS:	AYES	NAYS	ABSTAIN	ABSENT
MARQUEZ	<u>X</u>	_____	_____	_____
DESJARDINS	<u>X</u>	_____	_____	_____
BRINKER	<u>X</u>	_____	_____	_____
SHORETT	<u>X</u>	_____	_____	_____
KELLEY	<u>X</u>	_____	_____	_____
JOHNSON	<u>X</u>	_____	_____	_____
MC CAMMACK	<u>X</u>	_____	_____	_____


Rachel Clark, City Clerk

The foregoing Ordinance is hereby approved this 21st day of September, 2010.


PATRICK J. MORRIS, Mayor
City of San Bernardino

Approved as to form:

JAMES F. PENMAN
City Attorney

