

Location:	Citywide
Proposal:	Discussion of proposed Zoning Text Amendments to amend regulations for sale of alcoholic beverages at restaurants; specifically, pertaining to operating characteristics (service format) and geographic locations (restricted streets).
Applicant:	City of Oakland
Case File Number:	ZA18017
Planning Permits Required:	Zoning Text Amendment, pursuant to Planning Code Chapter 17.144
General Plan:	Citywide
Zoning:	Citywide
Environmental Determination:	The proposed amendments to the Planning Code rely on a number of previously adopted and certified program-level CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Wood Street EIR (2005); Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs - West Oakland (2003), Central City East (2003), and Coliseum (1995); the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, "Previous CEQA Documents"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).
Council District:	All Council Districts
Action to be taken:	Take public testimony; close the public hearing; and recommend approval of the proposal to the City Council
For further information:	Contact case planner Aubrey B Rose AICP at (510) 238-2071 or arose@oaklandca.gov

SUMMARY

Staff has drafted proposed Planning Code amendments relating to regulations for the sale of alcoholic beverage sales at restaurants. As described in this report, these proposed regulation changes for restaurants pertain to their operating characteristics (service format) and geographic locations (restricted streets). This amendment effort is based on the combined input of Councilmembers, merchants, City departments, and Planning staff. Staff requests the Planning Commission to review the proposed regulations and forward the item to the City Council with a recommendation. (ATTACHMENT A – Proposed Zoning Text Amendments)

BACKGROUND

In 1977, the City of Oakland adopted zoning regulations for alcoholic beverage sales (Ord. No. 9554). Under these regulations, the sale of alcoholic beverages at new markets and bars requires a Conditional Use Permit (CUP). For restaurants, however, the sale of alcoholic beverages (“alcohol”) is permitted without a CUP if the establishment operates under a “full-service” format. The original rationale for this distinction is that the likelihood of negative impacts was determined to be greatly decreased with a full-service establishment.

In most zoning districts today, “full-service” restaurants can often be permitted over the counter; therefore, alcohol sales with a restaurant can often be permitted without further zoning approvals involving public hearings and additional fees. As part of the process of permitting a restaurant to include alcohol sales over the zoning counter, Planning Bureau staff determines a restaurant to be “full-service” based on factors such as floor plan (namely, depiction of a dining room with one cash register and no queuing areas) and menu items (namely, inclusion of dinner entrees). For a “limited service” restaurant, however, the alcohol component is treated as a stand-alone alcohol sales land use; this means that many delicatessens, pizzerias, and burrito shops cannot serve alcohol without public hearings and significant additional fees; historically, likely due to the process, relatively few have applied. **(ATTACHMENT B – Existing Zoning Regulations)**

However, in many other cities, limited service restaurants are automatically granted zoning approval to sell beer and wine. Furthermore, in order to license a restaurant operator in California, the State Department of Alcoholic Beverage Control (ABC) does not distinguish between full and limited service. The primary requirement is that a premise be a “bona fide public eating place” with a maximum of fifty-percent of revenues derived from alcohol sales (50/50). Typical ABC permits for restaurants are the license type 41 (restaurant with beer and wine up to 24% alcohol content / 48 proof) and type 47 (restaurant with liquor, beer and wine). Therefore, not all restaurants need be approved for a full bar including liquor inside the establishment to pull an ABC permit; in fact, the majority of restaurants only sell beer and wine. **(ATTACHMENT C – ABC Common Restaurant License Types)**

Furthermore, in 1992, Oakland zoning regulations for alcohol at restaurants were made stricter (Ord. No. 11491): the code update required restaurants on certain major corridors (or “restricted streets,” including MacArthur Blvd., International Blvd., Foothill Blvd., and San Pablo Ave.) to obtain a Conditional Use Permit from the Planning Commission in order to sell alcohol with their meals. These streets may have been originally selected due to the fact that, at that time, they matched corridors where special restrictions applied to new alcohol outlets (that is, 1,000-foot distance separation). This separation requirement has subsequently been amended to include to all streets not located Downtown. In addition, the distance separation currently does not apply to off-sale / markets in the Jack London District; on-sale / bars throughout the Central District consisting of Downtown and beyond to 27th Street; and larger outlets, such as major supermarkets or drug stores.

In 1993, the description of a full-service restaurant was amended in the Planning Code with the adoption of the Deemed Approved Ordinance for legal nonconforming alcohol sales outlets (Ord. 11624), including a provision that no less than sixty percent (60%) of total revenue can be generated from food service and no more than forty percent (40%) of revenue from the sales of alcohol.

In 2011, the Planning Code was amended to make “restaurant” its own land use classification. This code update separated restaurants from the combined classification of “General Food Sales” (including markets) to “Full Service Restaurant” and “Limited Service Restaurant.” (Ord. No. 13064)

More recently, the “restricted streets” designation was eliminated for most of San Pablo Avenue, with no known issues (Ord. No. 13172). **(ATTACHMENT D - Prior Ordinances)**

In recent years, numerous restaurants have been established or upgraded throughout the City. This growth in new restaurants has established Oakland as a culinary destination in the region, and the phenomenon is nationally recognized. Staff notes it is now common for restaurants formerly not selling alcohol to express interest in selling beer and wine (ABC # 41), and for restaurants typically selling beer and wine to now seek the sale of liquor in addition to beer and wine (ABC # 47). Increasingly, many restaurants now do apply to operate as limited-service restaurant with sale of beer and wine, requiring a public hearing that often also involves a Variance for distance separation. Applicants have expressed concerns that the process is ambiguous and onerous. Additionally, restaurants on "restricted streets" routinely seek permission to sale alcohol, and dozens of hearings have been held. Therefore, due to a variety of factors and trends, staff considers the existing regulatory barriers to alcohol sales at "limited service" and "restricted streets" restaurants to be antiquated and in need of an update.

Such factors and trends include:

- Mismatch between City and ABC regulations; for example, the ABC does not differentiate between full and limited-service formats. By analogy, a previous mismatch for manufacturers such as breweries that were not bifurcated by the ABC has already been addressed in a Planning Code update.
- General trends in the restaurant industry in terms of both proliferation and format; that is, more restaurants are established than in the past, as evidenced by many tenant improvements to install commercial kitchens, and, many restaurants are moving from a full to limited-service format
- Operating expenses such as increasing rents and wages (the City has adopted a Minimum Wage Ordinance);
- Relaxation of other City alcohol regulations; for example, for off-sale in the Jack London District; floor-area to exempt distance separation between large retailers; and, for tasting rooms / bottle shops in manufacturers (breweries, wineries, distilleries, cideries, etc.)
- Equity in regulation of various districts throughout the City; a Major Conditional Use Permit involving a Planning Commission hearing applies to the certain streets as opposed to zoning districts and / or activity types
- Reductions in number of liquor stores and bars, as well as related issues, in various districts throughout the City; in other words, the perception of alcoholic beverage sales-related nuisances has diminished in recent decades
- Virtual lack of negative impacts by restaurants selling alcoholic beverages with their meals; that is, alcohol-related nuisances are not generally associated with restaurants as opposed to bars and liquor stores
- Approval of numerous similar Variances; that is, many Variances for limited service restaurants to serve alcoholic beverages have been approved; and, therefore,
- An identification of the permitting process as inappropriate and therefore warranting an update.

Therefore, staff proposes to eliminate the full-service restaurant requirement for inclusion of alcohol sales, and, to eliminate the current CUP requirement for full-service restaurants to include alcohol sales on restricted streets. This report will describe draft amendments that are proposed to update these regulations, and related issues, for Planning Commission consideration. (**ATTACHMENT E - ABC Statistics for Restaurants in Oakland**)

ANALYSIS

The following section summarizes the proposed changes to the Planning Code (new text is underlined and deleted text is ~~struck-out~~):

I. Amend the definition of "Full-service restaurant" in Section 17.09.040.

17.09.040 Definitions.

"Full-service restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant. Also, see Sections 17.10.272 and 17.156.070.

Staff Rationale: This amendment adds reference to the expanded full-service restaurant definitions under the Use Classification and Deemed Approved Alcoholic Beverage Sale Regulation chapters.

II. Amend Section 17.10.040, Accessory Activities.

17.10.040 Accessory activities.

In addition to the principal activities expressly included therein, each activity type shall be deemed to include such activities as are customarily associated with, and are appropriate, incidental, and subordinate to, such a principal activity; are located on the same lot as such principal activity except as otherwise provided in Subsections A., J., and K. of this Section; and meet the further conditions set forth hereinafter. Such accessory activities shall be controlled in the same manner as the principal activities within such type except as otherwise expressly provided in the zoning regulations. Such accessory activities include, but are not limited to, the activities indicated below, but exclude the sale of alcoholic beverages to the general public except at a Full-Service Restaurant, Limited Service Restaurant and Cafe, or at an alcoholic beverage manufacturer, as described in Sections 17.10.272, 17.10.274, 17.10.550, and 17.10.560; and subject to the standards in Section 17.103.030. (See also Section 17.10.050 for additional activities included within activity types in the case of combinations of different principal activities.)

Staff Rationale: Currently, only 'Full Service Restaurants' and 'alcoholic beverage manufacturers' are allowed to sell alcoholic beverages as an accessory activity. This change would allow 'Limited Service Restaurants and Cafes' to also sell alcoholic beverages as an accessory activity. In addition, the amendment adds applicable references to the 'Full Service Restaurant', 'Limited Service Restaurant and Café', 'Custom Manufacturing', and 'Light Manufacturing' Use Classifications in Chapter 17.10.

III. Amend Section 17.10.272, Full Service Restaurant Commercial Activities.

17.10.272 Full Service Restaurant Commercial Activities.

Full Service Restaurant Commercial Activities include the provision of food or beverage services to patrons who order and are served while seated (table service), and pay after eating. Only a minor proportion, if any, of the food is sold for consumption off-premises. These restaurants have kitchens that contain equipment suitable for cooking an assortment of foods; and may include service of liquor, beer and/or wine, subject to the standards in Section 17.103.030. Also, see Sections ~~17.103.130 and~~ 17.156.070 for definitions of a Full Service Restaurant in relation to the Deemed Approved Alcoholic Beverage Sale regulations. ~~Alcoholic Beverage Sales.~~ This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

Staff Rationale: This proposed change would specify the types of alcohol sales allowed at a 'Full Service Restaurant' (liquor, beer and/or wine); and could be a distinguishing factor from what is allowed at a 'Limited Service Restaurant and Café', as described further in the next item. In addition, the amendment corrects the existing reference to the Deemed Approved Alcoholic Beverage Sale regulations in Chapter 17.156.

IV. Amend Section 17.10.274, Limited Service Restaurant and Café Commercial Activities.

17.10.274 Limited Service Restaurant and Cafe Commercial Activities.

Limited Service Restaurant and Cafe Commercial Activities include the provision of food or beverage services to patrons that generally order and pay at a service counter before eating. Food and beverages may be served in disposable containers and may be consumed on the premises or taken out. Seating for on-premises consumption is usually available and table service may or may not be provided. These restaurants may include service of beer and/or wine, subject to the standards in Section 17.103.030. Examples of these activities include, but are not limited to, cafes and restaurants that do not fall under Section 17.10.272 Full Service Restaurant Commercial Activities, or Section 17.10.280 Fast-Food Restaurant Commercial Activities. Also, see Section 17.156.070 for definition of a Limited Service Restaurant and Cafe in relation to the Deemed Approved Alcoholic Beverage Sale regulations. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

Staff Rationale: This change as currently proposed would specify that a 'Limited Service Restaurant and Café' may include the sale of beer and/or wine only (no liquor). The Planning Commission could recommend, alternatively, that full liquor be allowed in the Central District (Downtown and beyond up to 27th Street, where there is an Entertainment District and where alcohol regulations are less strict than in the neighborhood commercial districts); or allow full liquor at all Limited Service Restaurants and Cafés, regardless of location.

V. Amend the title and content of Section 17.103.030.

17.103.030 Fast-Food Restaurant and, Convenience Market Commercial Activities, and Establishments Selling Alcoholic Beverages. ~~Sales Commercial Activities.~~

- A. Use Permit Criteria for Fast-Food Restaurants, Convenience Markets, and Establishments Selling Alcoholic Beverages. A Conditional Use Permit for any conditionally permitted Fast-Food Restaurant, Convenience Market, or Alcoholic Beverage Sales Commercial Activity may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the Conditional Use Permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following additional use permit criteria:

7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.; ~~The same criteria shall apply to all conditional use permits required by Subsection B. of this Section for sale of alcoholic beverages at full-service restaurants;~~
- B. Special Restrictions on Establishments Selling Alcoholic Beverages.
1. No Alcoholic Beverage Sales Commercial Activity or sale of alcoholic beverages shall be located closer than one thousand (1,000) feet to any other ~~establishment selling alcoholic beverages~~ ~~Alcoholic Beverages Sales Commercial Activity~~ measured between closest building walls, except:
 - b. Off-sale retail licenses located in the Jack London ~~D~~istrict (defined for the purposes of this Chapter only as within the boundaries of Martin Luther King Jr. Way to the west, I-880 to the north; the Lake Merritt Channel to the east; and the Estuary to the south); or
 - c. If the activity is in conjunction with a ~~Full Service Restaurant or Limited Service Restaurant and Cafe Commercial Activity~~; or
 - ~~2. Sale of alcoholic beverages in conjunction with a Full Service Restaurant Commercial Activity and located within any of the following restricted street areas applied to a depth of two hundred (200) feet on each side of the identified streets and portions of streets, as measured perpendicularly from the right-of-way line thereof: International Boulevard; Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying between Interstate 980 and 580; that portion of Edes Avenue lying between Clara Street and Bergedo Drive, shall require a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.~~
 - ~~23.~~ In addition to the criteria prescribed elsewhere in the zoning regulations, a land use permit for an Alcoholic Beverage Sales Commercial Activity located within an Alcoholic Beverage Sales license overconcentrated area shall only be granted, and a finding of Public Convenience or Necessity made, if the proposal conforms to all of the following three (3) criteria:
 - ~~34.~~ In addition to the above criteria, projects outside of the Central District, the Hegenberger Road Corridor, and the D-CO-2 and D-CO-3 Zones shall meet all of the following criteria to make a finding of Public Convenience or Necessity, with the exception of those projects that will result in twenty-five (25) or more full time equivalent (FTE) employees and will result in a total floor area of twelve thousand (12,000) square feet or more:
 - a. The proposed project is not within one thousand (1,000) feet of another alcohol outlet (not including ~~Full Service Restaurant and Limited Service Restaurant and Cafe Commercial Activities~~), school, licensed day care center, public park or playground, churches, senior citizen facilities, and licensed alcohol or drug treatment facilities; and
 - b. Police department calls for service within the "beat" where the project is located do not exceed by twenty percent (20%), the average of calls for police service in police beats Citywide during the preceding one (1) calendar year.
 - ~~45.~~ See Chapter 17.156 for Deemed Approved Alcoholic Beverage Sale regulations.
 5. Standards for Limited Service Restaurant and Cafe Commercial Activities that include the service of alcoholic beverages:
 - a. Hours of operation shall not exceed a closing time of 12:00 a.m., unless a Cabaret Permit is obtained.
 - b. Food service shall be offered at all times the Limited Service Restaurant or Cafe is open, with the exception that the establishment may elect to close the kitchen one hour prior to closing.
 - c. Minors shall be admitted at all times, unless a Cabaret Permit is obtained.
 - d. No admission shall be charged, unless a Cabaret Permit is obtained.

- e. Window clarity shall be maintained at or restored to seventy-five percent (75%) minimum.
 - f. Floor plan shall depict a dining area and no bar.
 - g. Off-sale (retail bottle sales of beer and/or wine) shall be considered with to-go food orders after a period of six (6) months of operation by same operator and upon completion of a satisfactory administrative compliance review.
 - h. Sale of alcoholic beverages shall not exceed fifty percent (50%) of total revenues.
 - i. That where the proposed use is abutting and facing residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.
6. Applicants for projects involving alcohol sales are encouraged to conduct outreach early in the permit review process, including but not limited to, contact with the City Council District Office, Neighborhood Crime Prevention Council/NCPC (can be contacted through the City's Neighborhood Service Coordinators), merchant groups, and any other applicable neighborhood groups. Outcomes should be reported to the Planning Bureau in writing.

Staff Rationale: The proposed changes to Section 17.103.030 would revise the existing special restrictions on establishments selling alcoholic beverages that staff has determined are antiquated and in need of reform:

- *The "Restricted streets" provision (Section 17.103.030.B.2) would be eliminated from the Planning Code, and the underlying zoning requirements for restaurants apply. Any zoning district located on corridors permitting restaurants by-right would be able to also include the sale of alcoholic beverages without the current requirement for a Conditional Use Permit (CUP).*
- *Sections 17.103.030(B.1) and 17.103.030(B.3.a) would be amended to specify that 'Limited Service Restaurants and Cafes' are exempt from the 1,000-foot separation requirement, same as Full Service Restaurants today.*
- *New standards applying to Limited Service Restaurants and Cafes would be added (Section 17.103.030.B.5), in order to ensure that the sale of beer and wine at limited service restaurants and cafes does not resemble a bar business in any way. Alternately, the Planning Commission may choose to not recommend attaching special standards to Limited Service Restaurants and Cafes that do not also apply to Full-Service Restaurants.*
- *The provision specifying that the sale of alcoholic beverages shall not exceed 50% of total revenues aligns with ABC requirements.*
- *The proposed new standards that: 1) limit hours of operation where the proposed use is abutting and facing residential uses, especially bedroom windows, and 2) encourage applicants to conduct community outreach, are both consistent with the typical criteria and conditions of approval the city currently applies to establishments selling alcoholic beverages.*

VI. Amend Section 17.134.020, Definition of Major and Minor Conditional Use Permits

17.134.020 Definition of Mmajor and Mminor Conditional Use Permits.

- A. **Major Conditional Use Permit.** A Conditional Use Permit (CUP) is considered a Major Conditional Use Permit if it involves any of the following:
2. **Uses.** Any project requiring a Conditional Use Permit that involves any of the following activity or facility types except where the proposal involves only accessory parking, the resumption of a discontinued nonconforming activity, or an addition to an existing activity which does not increase the existing floor area by more than twenty percent (20%):
 - a. **Activities:**

- iv. Fast-Food Restaurant Commercial;
- vi. Alcoholic Beverage Sales Commercial; ~~or sale of alcoholic beverages at any full service restaurant in a location described by Subsection 17.103.030.B;~~

Staff Rationale: This proposed change would remove the existing provision specifying that the sale of alcoholic beverages at any Full-Service Restaurant on a "restricted street" requires a Major Conditional Use Permit. As stated earlier, many restaurants on "restricted streets" routinely seek permission to sale alcohol, and dozens of public hearings have been held. Applicants have expressed concerns that the existing process is time consuming, costly, and onerous. Therefore, due to a variety of factors, staff considers the existing regulatory barriers to alcohol sales on "restricted street" restaurants to be antiquated and in need of an update.

KEY ISSUES AND IMPACTS

Staff finds no issues or impacts with these proposed Zoning Text Amendments. Staff suggests the Planning Commission exercise one of the following options, recommending Option 1:

- OPTION 1: Forward staff's proposal as a draft Ordinance to the City Council with a recommendation of approval;
- OPTION 2: Direct staff to make specific revisions to the draft Ordinance and forward to City Council with a recommendation of approval.

ENVIRONMENTAL ANALYSIS

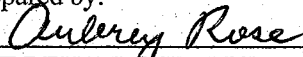
The proposed amendments to the Planning Code rely on a number of previously adopted and certified program-level CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Wood Street EIR (2005); Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs - West Oakland (2003), Central City East (2003), and Coliseum (1995); the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, "Previous CEQA Documents"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

RECOMMENDATIONS


Staff requests that the Planning Commission:

1. Affirm staff's environmental determination, and
2. Recommend that the City Council Approve the proposed zoning code amendments related to sale of alcoholic beverages at restaurants

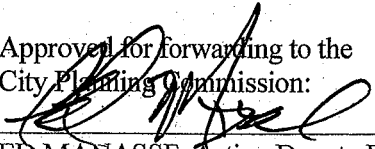
Prepared by:


AUBREY B ROSE, AICP
Planner III / Zoning Counter Supervisor

Reviewed by:


ROBERT MERKAMP
Acting Zoning Manager

Approved for forwarding to the
City Planning Commission:


ED MANASSE, Acting Deputy Director
Planning Bureau

ATTACHMENTS:

- A. Proposed Zoning Text Amendments
- B. Existing Zoning Regulations
- C. ABC Common Restaurant License Types
- D. Prior Ordinances
- E. ABC Statistics for Restaurants in Oakland

ATTACHMENT A - Proposed Zoning Text Amendments

ATTACHMENT A

Proposed Amendments to the Oakland Planning Code

Amendments to Oakland Planning Code. The Oakland Planning Code is proposed to be amended as follows (new text is underlined and deleted text is ~~struck-out~~):

Chapter 17.09 DEFINITIONS

Sections:

17.09.040 Definitions.

17.09.040 Definitions.

"Full-service restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant. Also, see Sections 17.10.272 and 17.156.070.

Chapter 17.10 USE CLASSIFICATIONS

Sections:

Article I - General Classification Rules

Article II - Activity Types

Part 1 - Residential Activity Types

Part 3 - Commercial Activity Types

Article I General Classification Rules

17.10.040 Accessory activities.

17.10.040 Accessory activities.

In addition to the principal activities expressly included therein, each activity type shall be deemed to include such activities as are customarily associated with, and are appropriate, incidental, and subordinate to, such a principal activity; are located on the same lot as such principal activity except as otherwise provided in Subsections A., J., and K. of this Section; and meet the further conditions set forth hereinafter. Such accessory activities shall be controlled in the same manner as the principal activities within such type except as otherwise expressly provided in the zoning regulations. Such accessory activities include, but are not limited to, the activities indicated below, but exclude the sale of alcoholic beverages to the general public except at a Full-Service Restaurant, Limited Service Restaurant and Cafe, or at an alcoholic beverage manufacturer, as described in Sections 17.10.272, 17.10.274, 17.10.550, and 17.10.560; and subject to the standards in Section 17.103.030. (See also Section 17.10.050 for additional activities included within activity types in the case of combinations of different principal activities.)

Part 3 Commercial Activity Types

17.10.272 Full Service Restaurant Commercial Activities.

17.10.274 Limited Service Restaurant and Cafe Commercial Activities.

17.10.272 Full Service Restaurant Commercial Activities.

Full Service Restaurant Commercial Activities include the provision of food or beverage services to patrons who order and are served while seated (table service), and pay after eating. Only a minor proportion, if any, of the food is sold for consumption off-premises. These restaurants have kitchens that contain equipment suitable for cooking an assortment of foods; and may include service of liquor, beer and/or wine, subject to the standards in Section 17.103.030. Also, see Section s 7.103.130 and 17.156.070 for definitions of a Full-Service Restaurant in relation to the Deemed Approved Alcoholic Beverage Sale regulations, Alcoholic Beverage Sales. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

17.10.274 Limited Service Restaurant and Cafe Commercial Activities.

Limited Service Restaurant and Cafe Commercial Activities include the provision of food or beverage services to patrons that generally order and pay at a service counter before eating. Food and beverages may be served in disposable containers and may be consumed on the premises or taken out. Seating for on-premises consumption is usually available and table service may or may not be provided. These restaurants may include service of beer and/or wine, subject to the standards in Section 17.103.030. Examples of these activities include, but are not limited to, cafes and restaurants that do not fall under Section 17.10.272 Full Service Restaurant Commercial Activities, or Section 17.10.280 Fast-Food Restaurant Commercial Activities. Also, see Section 17.156.070 for definition of a Limited Service Restaurant and Cafe in relation to the Deemed Approved Alcoholic Beverage Sale regulations. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

Chapter 17.103 SPECIAL REGULATIONS AND FINDINGS FOR CERTAIN USE CLASSIFICATIONS

Sections:

Article III - Commercial Activities

Article III Commercial Activities

17.103.030 Fast-Food Restaurant and, Convenience Market Commercial Activities, and Establishments Selling Alcoholic Beverages, ~~Sales Commercial Activities~~.

17.103.030 Fast-Food Restaurant and, Convenience Market Commercial Activities, and Establishments Selling Alcoholic Beverages, ~~Sales Commercial Activities~~.

- A. Use Permit Criteria for Fast-Food Restaurants, Convenience Markets, and Establishments Selling Alcoholic Beverages. A Conditional Use Permit for any conditionally permitted Fast-Food Restaurant, Convenience Market, or Alcoholic Beverage Sales Commercial Activity may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the Conditional Use Permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following additional use permit criteria:
7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.; ~~The same criteria shall apply to all conditional use permits required by Subsection B. of this Section for sale of alcoholic beverages at full-service restaurants;~~
- B. Special Restrictions on Establishments Selling Alcoholic Beverages.
1. No Alcoholic Beverage Sales Commercial Activity or sale of alcoholic beverages shall be located closer than one thousand (1,000) feet to any other establishment selling alcoholic beverages ~~Alcoholic Beverage Sales Commercial Activity~~ measured between closest building walls, except:
 - b. Off-sale retail licenses located in the Jack London District (defined for the purposes of this Chapter only as within the boundaries of Martin Luther King Jr. Way to the west, I-880 to the north; the Lake Merritt Channel to the east; and the Estuary to the south); or
 - c. If the activity is in conjunction with a Full-Service Restaurant or Limited Service Restaurant and Cafe Commercial Activity; or
 2. ~~Sale of alcoholic beverages in conjunction with a Full Service Restaurant Commercial Activity and located within any of the following restricted street areas applied to a depth of two hundred (200) feet on each side of the identified streets and portions of streets, as measured perpendicularly from the right-of-way line thereof: International Boulevard; Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying between Interstate 980 and 580; that portion of Edes Avenue~~

~~lying between Clara Street and Bergedo Drive, shall require a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.~~

23. In addition to the criteria prescribed elsewhere in the zoning regulations, a land use permit for an Alcoholic Beverage Sales Commercial Activity located within an Alcoholic Beverage Sales license overconcentrated area shall only be granted, and a finding of Public Convenience or Necessity made, if the proposal conforms to all of the following three (3) criteria:
34. In addition to the above criteria, projects outside of the Central District, the Hegenberger Road Corridor, and the D-CO-2 and D-CO-3 Zones shall meet all of the following criteria to make a finding of Public Convenience or Necessity, with the exception of those projects that will result in twenty-five (25) or more full time equivalent (FTE) employees and will result in a total floor area of twelve thousand (12,000) square feet or more:
 - a. The proposed project is not within one thousand (1,000) feet of another alcohol outlet (not including Full Service Restaurant and Limited Service Restaurant and Cafe Commercial Activities), school, licensed day care center, public park or playground, churches, senior citizen facilities, and licensed alcohol or drug treatment facilities; and
 - b. Police department calls for service within the "beat" where the project is located do not exceed by twenty percent (20%), the average of calls for police service in police beats Citywide during the preceding one (1) calendar year.
45. See Chapter 17.156 for Deemed Approved Alcoholic Beverage Sale regulations.
5. Standards for Limited Service Restaurant and Cafe Commercial Activities that include the service of alcoholic beverages:
 - a. Hours of operation shall not exceed a closing time of 12:00 a.m., unless a Cabaret Permit is obtained.
 - b. Food service shall be offered at all times the Limited Service Restaurant or Cafe is open, with the exception that the establishment may elect to close the kitchen one hour prior to closing.
 - c. Minors shall be admitted at all times, unless a Cabaret Permit is obtained.
 - d. No admission shall be charged, unless a Cabaret Permit is obtained.
 - e. Window clarity shall be maintained at or restored to seventy-five percent (75%) minimum.
 - f. Floor plan shall depict a dining area and no bar.
 - g. Off-sale (retail bottle sales of beer and / or wine) shall be considered with to-go food orders after a period of six (6) months of operation by same operator and upon completion of a satisfactory administrative compliance review.
 - h. Sale of alcoholic beverages shall not exceed fifty percent (50%) of total revenues.
 - i. That where the proposed use is abutting and facing residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.
6. Applicants for projects involving alcohol sales are encouraged to conduct outreach early in the permit review process, including but not limited to, contact with the City Council

District Office, Neighborhood Crime Prevention Council/NCPC (can be contacted through the City's Neighborhood Service Coordinators), merchant groups, and any other applicable neighborhood groups. Outcomes should be reported to the Planning Bureau in writing.

Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE

Sections:

17.134.020 Definition of Mmajor and Mminor Cconditional Uuse Ppermits.

17.134.020 Definition of Mmajor and Mminor Cconditional Uuse Ppermits.

A. **Major Conditional Use Permit.** A Conditional Use Permit (CUP) is considered a Major Conditional Use Permit if it involves any of the following:

2. **Uses.** Any project requiring a Conditional Use Permit that involves any of the following activity or facility types except where the proposal involves only accessory parking, the resumption of a discontinued nonconforming activity, or an addition to an existing activity which does not increase the existing floor area by more than twenty percent (20%):

a. Activities:

iv. Fast-Food Restaurant Commercial;

vi. Alcoholic Beverage Sales Commercial; ~~or sale of alcoholic beverages at any full-service restaurant in a location described by Subsection 17.103.030.B;~~

Chapter 17.156 DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS
Sections:

Article II - Definitions

Article II Definitions

17.156.070 Definitions.

17.156.070 Definitions.

As used in this Chapter:

"Alcoholic Beverage Sales Commercial Activity" means the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, excluding Full-Service Restaurants and Limited Service Restaurants and Cafes that comply with the below-listed definition of Full Service Restaurant or Limited Service Restaurant and Cafe.

"Full-Service Restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant. To be considered a Full Service Restaurant under the Deemed Approved Program, the establishment must meet the following criteria:

1. A "Full Service Restaurant" shall serve "meals" to guests at all times the establishment is open for business. An establishment shall not be considered a "Full-Service Restaurant" if it served alcohol without "meal" service being provided with the exception that alcohol sales to restaurant patrons may continue for up to two (2) hours after meal service has ceased to allow guests to comfortably complete their meals.
2. There shall be a real offer or holding out to sell "meals." Premises shall make an offer or holding out of sales of "meals" to the public by maintaining and displaying a printed menu and/or a menu board. A two-thirds (2/3) majority of the items offered on the menu shall be available at any given time the establishment is open. The mere offering of "meals" without actual sales shall not be deemed sufficient.
3. The "offer" of "meals" is not adequate to meet the above criteria. A "full service restaurant" shall make actual and substantial sales of "meals" to guests for compensation. Substantial sales shall mean that no less than sixty percent (60%) of total revenue shall be generated from food service and no more than forty percent (40%) of revenue from the sales of alcohol.
4. "Meals" means the usual assortment of foods commonly ordered at various times of the day for the cuisine served. The service of snack foods and/or appetizers alone shall not be deemed compliance with this requirement. "Meals" shall be prepared on the premises. Heating of food prepared elsewhere shall not constitute a meal for the purposes of this policy.
5. Premises shall be equipped for meal service and maintained in good faith. Premises must possess and maintain appliances for the cooking of a variety of foods such as

stoves, ovens, broilers, or other devices, as well as pots, pans, or containers that can be used for cooking. Premises shall possess the necessary utensils, table service, and condiment dispensers with which to serve "meals" to the public.

6. A Full Service Restaurant shall comply with all local health department standards.
7. A Full Service Restaurant may have a separate lounge or bar area provided that the restaurant and bar/lounge area operate as a single entity. The physical layout, entry location(s), spatial connection between the areas, and operational characteristics, among other factors, shall be used to determine compliance. Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
8. To the extent that State Department of Alcoholic Beverage Control (ABC) regulations do not conflict with the above criteria, a Full Service Restaurant shall comply with all ABC regulations related to "Bona fide public eating place, meals."

"Legal Nonconforming Alcoholic Beverage Sales Commercial Activity" or **"Legal Nonconforming Activity"** means an Alcoholic Beverage Sales Commercial Activity which was a nonconforming use pursuant to the Nonconforming Use Regulations in Chapter 17.114, and for which a valid state of California Alcoholic Beverage Control license had been issued and used in the exercise of the rights and privileges conferred by the license, at a time immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale regulations. Such an Activity shall be considered a Deemed Approved Activity, and shall no longer be considered a Legal Nonconforming Activity, except such activity shall be subject to those zoning regulations relating to nonconforming uses as specified in Section 17.156.040C, as of the effective date of the Deemed Approved Alcoholic Beverage Sale regulations.

"Limited Service Restaurant and Café" means a place that provides food or beverage services to patrons that generally order and pay at a service counter before eating. Food and beverages may be served in disposable containers and may be consumed on the premises or taken out. Seating for on-premises consumption is usually available and table service may or may not be provided. Examples of these activities include, but are not limited to, cafes and restaurants that do not fall under the definition of "Full Service Restaurant" as used in this Chapter; or the definition of Full Service Restaurant Commercial Activities, as specified in Section 17.10.272, or Fast-Food Restaurant Commercial Activities, as specified in Section 17.10.280.

"Officer" means Administrative Hearing Officer, as provided for at Section 17.156.050.

"Performance standards" means regulations prescribed in the Deemed Approved Performance Standards in Article III of this Chapter.

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

"Restricted street" means that area applied to a depth of two hundred (200) feet on each side of and including the following streets and portions of streets, as measured perpendicularly from the right-of-way line thereof: International Boulevard; Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying between Highway 1-980 and 1-580; that portion of Edes Avenue lying between Clara Street and Bergedo Drive.

ATTACHMENT B - Existing Zoning Regulations

OAKLAND

3. "Either...or" indicates that the connected items or provisions shall apply singly but not in combination.
- I. All public officials, bodies, and agencies to which reference is made are those of the city of Oakland unless otherwise indicated.
- J. The word "city" means the City of Oakland.

(Ord. 12054 § 1(c), 1998; prior planning code § 2101)

17.09.030 Use classifications.

Activity types and facility types, the names of which always start with capital letters, are described in the use classifications in Chapter 17.10.

(Ord. 12054 § 1(c), 1998; prior planning code § 2102)

17.09.040 Definitions.

"A weighted sound level" means the total sound level in decibels of all sound as measured with a sound level meter with a reference pressure of twenty (20) micropascals using the 'A' weighted network (scale) at slow response. The unit of measurement shall be defined as dBA or dB(a).

"Access facility width" means the width of the paved roadway surface curb-to-curb or edge-to-edge, exclusive of shoulders.

"Accessory activity" means an activity which is incidental to, and customarily associated with, a specified principal activity, and which meets the applicable conditions set forth in Section 17.10.040.

"Accessory facility" means a facility, other than a Sign, which is incidental to, and customarily associated with, a specified principal facility, and which meets the applicable conditions set forth in Section 17.10.070.

"Accessory structure" means a building or facility, other than a Sign, which is incidental to, and customarily associated with, a specified principal facility, and which meets the applicable regulations set forth in Title 17 of the Oakland Planning Code.

"Activity" means the performance of a function or operation.

"Activity type" means a type of activity which is specially described as such by the use classifications in Chapter 17.10 on the basis of common functional characteristics and similar effects on other uses, and which is designated throughout the zoning regulations by a special name each word of which starts with a capital letter.

"Adult entertainment activity" means any commercial activity, whether conducted intermittently or full-time, which primarily involves the sale, display, exhibition, or viewing of books, magazines, films, photographs, or other materials, distinguished or characterized by an emphasis on matter depicting, describing, or relating to human sex acts, or by emphasis on male or female genitals, buttocks, or female breasts.

"Alcoholic beverage" means alcohol, spirits, liquor, wine, beer, or any liquid or solid containing alcohol, spirits, wine, or beer, which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

"Alcoholic beverage license overconcentrated areas" means a police beat with crime rates that exceed the City median by twenty (20) percent or more or a census tract in which the per capita number of on-sale or off-sale retail Alcoholic Beverage Sales licenses exceeds the Alameda County median.

"Alley" means a dedicated public way intended primarily to provide secondary vehicular access to abutting properties.

"Alteration" means any enlargement; addition; demolition; removal; relocation; repair; remodeling; change in number of living units; development of or change in an open area; development of or change in a Sign, by painting or otherwise; or other change in a facility, but excluding painting except as provided above for Signs, and ordinary maintenance for which no building permit is required.

"Ambient noise level" means the all-encompassing noise level associated with a given environment, being a composite of sounds from all sources, excluding any alleged offensive noise. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location.

"Area Damaged by the 1991 Firestorm" means all of that area situated: beginning at the intersection of Claremont Avenue and the westerly line of the University of California, Berkeley campus, thence southerly along said westerly property line of the University of California campus to Grizzly Peak Boulevard; thence southeasterly on Grizzly Peak Boulevard to the most westerly line of the Robert Sibley Volcanic Regional Preserve; thence due south to Skyline Boulevard; thence westerly on Skyline Boulevard to Broadway Terrace; thence southwest on Broadway Terrace to Farallon Way; thence southwest on Farallon Way and the extension of Farallon Way to Pinehaven Road; thence westerly on Pinehaven Road to Broadway Terrace; thence southerly on Broadway Terrace to Uranus Avenue; thence east on Uranus Avenue to Sherwood Drive; thence south on Sherwood Drive to Taurus Avenue; thence west on Taurus Avenue approximately six hundred fifty (650) feet to a path connecting Taurus Avenue and Capricorn Avenue; thence south along said path to Capricorn Avenue; thence south on Capricorn Avenue to Florence Terrace; thence north and west on Florence Terrace and an extension of Florence Terrace across Highway 13 to Estates Drive; thence west on Estates Drive to Masonic Avenue; thence south on Masonic Avenue to Amy Drive; thence southwest on Amy Drive to Harbord Drive; thence southeast on Harbord Drive to Maxwellton Road; thence southwest on Maxwellton Road to the Oakland-Piedmont border; thence northwest along said Oakland-Piedmont border to Clarewood Drive; thence northwest on Clarewood Drive to Broadway Terrace; thence west on Broadway Terrace to Margarido Drive; thence north and east on Margarido Drive to Rockridge Boulevard South; thence west on Rockridge Boulevard South to Rockridge Boulevard; thence west on Rockridge Boulevard to Broadway; thence north on Broadway to Golden Gate Avenue; thence north on Golden Gate Avenue to Chabot Road; thence along the extension of Golden Gate Avenue to the Oakland-Berkeley border; thence along said Oakland-Berkeley border to the intersection of said Oakland-Berkeley border with Claremont Avenue; thence northeast on Claremont Avenue to the point of beginning.

"Area of Primary Importance" or **"API"** means an area as defined by the Historic Preservation Element of the General Plan.

"Area of Secondary Importance" or **"ASI"** means an area as defined by the Historic Preservation Element of the General Plan.

"Attic" means a space between the roof framing and the floor of such space and which is excluded from the definition of "story."

OAKLAND

Custom Manufacturing

Light Manufacturing

General Manufacturing

Heavy/High Impact Manufacturing

Research and Development

Construction Operations

Warehousing, Storage and Distribution

Regional Freight Transportation

Trucking and Truck-Related

Recycling and Waste-Related

Hazardous Materials Production, Storage and Waste Management

E. Agricultural and Extractive Activities:

Plant Nursery

Limited Agriculture

Extensive Agriculture

Mining and Quarrying

(Ord. No. 13172, § 3(Exh. A), 7-2-2013; Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. No. 12999, § 4(Exh. A), 3-16-2010; Ord. No. 12939, § 4(Exh. A), 6-16-2009; Ord. 12899 § 4, Exh. A (part), 2008; Ord. 12138 § 4 (part), 1999; Ord. 12072 § 4, 1998; Ord. 11904 § 5.02, 1996; prior planning code § 2210)

17.10.040 Accessory activities.

In addition to the principal activities expressly included therein, each activity type shall be deemed to include such activities as are customarily associated with, and are appropriate, incidental, and subordinate to, such a principal activity; are located on the same lot as such principal activity except as otherwise provided in Subsections A., J., and K. of this Section; and meet the further conditions set forth hereinafter. Such accessory activities shall be controlled in the same manner as the principal activities within such type except as otherwise expressly provided in the zoning regulations. Such accessory activities include, but are not limited to, the activities indicated below, but exclude the sale of alcoholic beverages to the general public except at a full-service restaurant or at an alcoholic beverage manufacturer, as described in Sections 17.10.550, 17.10.560, and 17.103.030. (See also Section 17.10.050 for additional activities included within activity types in the case of combinations of different principal activities.)

- A. Off-street parking and loading serving a principal activity, whether located on the same lot thereas or on a different lot, but only if the facilities involved are reserved for the residents, employees, patrons, or other persons participating in the principal activity;

17.10.050 Classification of combinations of principal activities.

The following rules shall apply where a single lot contains activities which resemble two or more different activity types and which are not classified by Section 17.10.040 as accessory activities:

- A. **Separate Classification of Each Establishment.** The principal activities conducted on a single lot by each individual establishment, management, or institution shall be classified separately.
- B. **Separate Classification of Different Major Classes of Activities Conducted by Single Establishment.** If the principal activities conducted on a single lot by a single establishment, management, or institution resemble two or more different major classes of activities—Residential, Civic, Commercial, Industrial, or Agricultural and Extractive Activities—the principal activities resembling each major class shall be classified separately.
- C. **Classification of Different Activities within Same Major Class, Conducted by Single Establishment.** If principal activities conducted on a single lot by a single establishment, management, or institution resemble two or more different activity types within the same major class of activities, all such principal activities shall be classified in the activity type within said class the description of which type most closely portrays the overall nature of such activities. However, when they have any of the characteristics of Utility and Vehicular, Health Care, or Extensive Impact Civic Activities; Alcoholic Beverage Sales or General Wholesale Sales Commercial Activities; General Manufacturing, Heavy/High Impact Manufacturing, or Warehousing, Storage, and Distribution-Automotive Salvage/Junk Yards Industrial Activities; or Limited Agriculture, Extensive Agriculture, or Mining and Quarrying Agricultural or Extractive Activities, all such principal activities within the same major class of activities as any of such types shall be classified within that one of such types the description of which most closely portrays said principal activities; except that all such Industrial Activities shall be classified within the Warehousing, Storage, and Distribution-Automotive Salvage/Junk Yards Industrial Activities type if they have any of its characteristics, and all such Industrial Activities shall be classified within the Heavy/High Impact Industrial Activities type if they have any of its characteristics.
- D. **Classification of Different Activities within the Same Major Class Conducted on the Site of an Automobile and Other Light Vehicle Gas Station and Servicing Commercial Activity.** All principal activities conducted on the site of an Automobile and Other Light Vehicle Gas Station and Servicing Commercial Activity shall be classified as Automobile and Other Light Vehicle Gas Station and Servicing Commercial Activities regardless of separate ownership or management, unless said principal activity is listed as a Conditionally Permitted Activity pursuant to the individual zone regulations and such principal activity requires a Major Conditional Use Permit pursuant to Section 17.134.020.

(Ord. No. 12939, § 4(Exh. A), 6-16-2009; Ord. 12899 § 4, Exh. A (part), 2008; prior planning code § 2213)

17.10.060 Listing of facility classifications.

All facilities are classified into the following facility types, which are described in Section Article III of this Chapter. (See Section 17.10.080 for classification of combinations of facilities

17.10.260 General description of Commercial Activities.

Commercial Activities include the distribution and sale or rental of goods; the provision of services other than those classified as Civic Activities; and the administrative and research operations of private, profit-oriented firms, other than public utility firms. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

(Ord. No. 12939, § 4(Exh. A), 6-16-2009)

17.10.270 General Food Sales Commercial Activities.

General Food Sales Commercial Activities include the retail sales of food or beverages for off-site preparation and consumption. This classification includes, but is not limited to, the following:

- A. Supermarkets or grocery stores that offer a variety of food items for home consumption such as a combination of fresh fruits, vegetables, breads, meat, dairy products, cereals, pastas, and prepackaged foods. Generally, grocery stores are a minimum five thousand (5,000) square feet and have a minimum twenty percent (20%) of net retail floor area devoted to the display of fresh fruits and vegetables and/or fresh meats, whichever is greater.
- B. Stores specializing in particular or distinctive food items, including but not limited to, retailers whose primary business maintains an inventory of specialty, gourmet, health, or ethnic food items. Examples of activities in this classification include, but are not limited to, the following:
 - Gourmet food stores;
 - Bakeries;
 - Butchers;
 - Specialty food stores;
 - Fish and poultry shops;
 - Produce markets;
 - Delicatessens (may include sandwich shops in conjunction with the sale of other delicatessen products);
 - Health food stores.

This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

(Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. No. 12939, § 4(Exh. A), 6-16-2009)

17.10.272 Full Service Restaurant Commercial Activities.

Full Service Restaurant Commercial Activities include the provision of food or beverage services to patrons who order and are served while seated (table service), and pay after eating. Only a minor proportion, if any, of the food is sold for consumption off-premises. These

OAKLAND

restaurants have kitchens that contain equipment suitable for cooking an assortment of foods. Also, see Sections 17.103.130 and 17.156.070 for definitions of a full-service restaurant in relation to Alcoholic Beverage Sales. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

(Ord. No. 13172, § 3(Exh. A), 7-2-2013; Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. No. 12939, § 4(Exh. A), 6-16-2009)

17.10.274 Limited Service Restaurant and Cafe Commercial Activities.

Limited Service Restaurant and Cafe Commercial Activities include the provision of food or beverage services to patrons that generally order and pay before eating. Food and beverages may be served in disposable containers and may be consumed on the premises or taken out. Seating for on-premises consumption is usually available and table service may or may not be provided. Examples of these activities include, but are not limited to, cafes and restaurants that do not fall under 17.10.272 Full Service Restaurant or 17.10.280 Fast-food Restaurant Commercial Activities. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

(Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. No. 12939, § 4(Exh. A), 6-16-2009)

17.10.280 Fast-Food Restaurant Commercial Activities.

- A. Fast-Food Restaurant Commercial Activities include the retail sale of ready-to-eat prepared foods and beverages, for on- or off-premises consumption, whenever the foods and beverages are available upon a short waiting time and are primarily served in or on disposable wrappers, containers, or plates. Fast-Food Restaurants may also exhibit other design and operating characteristics, including: (1) a limited menu; (2) food is typically ordered and served at a service counter; (3) food is paid for prior to consumption; (4) the facility in which the activity/use is occurring provides a take-out counter space and space for customer queuing. They also include certain activities accessory to the above, as specified in Section 17.10.040.
- B. Except as may otherwise be allowed in Oakland Municipal Code (OMC) Chapters 5.49, 5.51, 8.09, and 9.52, the sale of ready-to-consume prepared foods from trucks, pushcarts or other movable equipment located on public or private property on a semi-permanent basis during hours of operation. Vehicular food vending generally has the following characteristics:
- Food is ordered and served from a take-out counter that is integral to the catering truck;
 - Food is paid for prior to consumption;
 - Catering trucks, pushcarts or other movable equipment from which the food is sold typically have a take-out counter and space for customer queuing;
 - Food and beverages are served in disposable wrappers, plates or containers; and
 - Food and beverages are prepared and sold for off-site consumption.

This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

OAKLAND

(Ord. No. 13172, § 3(Exh. A), 7-2-2013; Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. No. 12939, § 4(Exh. A), 6-16-2009)

Editor's note—

Ord. No. 13064, § 2(Exh. A), adopted March 15, 2011, renumbered the former Sections 17.10.280 (Convenience market commercial activities) and 17.10.290 (Fast-food restaurant commercial activities) as Sections 17.10.290 and 17.10.280, respectively. The historical notation has been preserved for reference purposes.

17.10.290 Convenience Market Commercial Activities.

Convenience Market Commercial Activities include the retail sale of food, beverages, and small personal convenience items, primarily for off-premises consumption and typically found in establishments with long or late hours of operation and a relatively small building; but exclude delicatessens and other specialty food shops, establishments that have a sizeable amount of highly perishable items such as fresh fruits and vegetables, fresh-cut meat. In general, "late hours of operation" means businesses that stay open until or after 10:00 p.m. or at or before 7:00 a.m.; "relatively small building" means a building that is less than five thousand (5,000) square feet; and "a sizeable amount of highly perishable items" means at least twenty percent (20%) of net retail floor area devoted to fresh fruits and vegetables and/or fresh meats, whichever is greater, devoted to these products. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

(Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. No. 12939, § 4(Exh. A), 6-16-2009)

Editor's note—

See editor's note at Section 17.10.280

17.10.300 Alcoholic Beverage Sales Commercial Activities.

Alcoholic Beverage Sales Commercial Activities include the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, but exclude full-service restaurants and alcoholic beverage manufacturers. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

(Ord. No. 12939, § 4(Exh. A), 6-16-2009)

17.10.320 Mechanical or Electronic Games Commercial Activities.

Mechanical or Electronic Games Commercial Activities include the provision of pinball machines, video game devices, or other mechanical or electronic games, as defined in the Oakland Municipal Code, where the games can be played or operated by the public or by customers; but exclude the provision of such games in a pool or billiard room or bowling alley for which a permit is required pursuant to Chapter 5.02 of the Oakland Municipal Code and from which persons under eighteen (18) years of age are barred at all times by the owner or operator, or in premises which are licensed by the State Department of Alcoholic Beverage Control for on-sale consumption of alcoholic beverages and which do not lawfully allow minors.

17.103.030 Fast-Food Restaurant, Convenience Market, and Alcoholic Beverage Sales Commercial Activities.

- A. Use Permit Criteria for Fast-Food Restaurants, Convenience Markets, and Establishments Selling Alcoholic Beverages. A conditional use permit for any conditionally permitted Fast-Food Restaurant, Convenience Market, or Alcoholic Beverage Sales Commercial Activity may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following additional use permit criteria:
1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;
 2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;
 3. That the proposal will not interfere with the movement of people along an important pedestrian street;
 4. That the proposed development will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;
 5. That the design will avoid unduly large or obtrusive Signs, bleak unlandscaped parking areas, and an overall garish impression;
 6. That adequate litter receptacles will be provided where appropriate;
 7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m. The same criteria shall apply to all conditional use permits required by Subsection B. of this Section for sale of alcoholic beverages at full-service restaurants;
 8. That proposals for new Fast-Food Restaurants must substantially comply with the provisions of the Oakland City Planning Commission "Fast-Food Restaurant—Guidelines for Development and Evaluation" (OCPD 100-18).
- B. Special Restrictions on Establishments Selling Alcoholic Beverages.
1. No Alcoholic Beverage Sales Commercial Activity or sale of alcoholic beverages shall be located closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Commercial Activity measured between closest building walls, except:
 - a. On-sale retail licenses located in the Central District (defined for the purposes of this Chapter only as within the boundaries of 1-980 and Brush street to the west; both sides of 27th Street to the north; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south); or
 - b. Off-sale retail licenses located in the Jack London district (defined for the purposes of this Chapter only as within the boundaries of Martin Luther King Jr. Way to the west, I-880 to the north; the Lake Merritt Channel to the east; and the Estuary to the south); or

OAKLAND

- c. If the activity is in conjunction with a Full-Service Restaurant Commercial Activity; or
 - d. Establishments with twenty-five (25) or more full time equivalent (FTE) employees or a total floor area of twelve thousand (12,000) square feet or more.
 - e. If the activity is in conjunction with the on-sale and/or off-sale of alcoholic beverages at an alcoholic beverage manufacturer:
 - i. For the purposes of this Chapter only, an "alcoholic beverage manufacturer" means a Custom or Light Manufacturing Industrial Activity producing alcoholic beverages as a principal activity, with a State of California Department of Alcoholic Beverage Control (ABC) license type that includes, but is not limited to, a Type 02 (Winegrower) or Type 23 (Small Beer Manufacturer). The ABC license type shall not consist solely of a bar or liquor store license type, such as a Type 48, 20, or 21. The on-sale and/or off-sale of alcoholic beverages at such an alcoholic beverage manufacturer are excluded from the definition of Alcoholic Beverage Sales Commercial Activities, as specified in Section 17.10.300.
 - ii. The sale of alcoholic beverages at an alcoholic beverage manufacturer is only permitted upon the granting of a Minor Conditional Use Permit (CUP), regardless of whether such Custom or Light Manufacturing Industrial Activity is otherwise allowed by right in the underlying zone (see Chapter 17.134 for the CUP procedure).
 - iii. Also, no additional CUP findings are required, regardless of whether such sale of alcoholic beverages at an alcoholic beverage manufacturer meets normally required separation requirements, and/or is located in an over-concentrated area.
2. Sale of alcoholic beverages in conjunction with a Full Service Restaurant Commercial Activity and located within any of the following restricted street areas applied to a depth of two hundred (200) feet on each side of the identified streets and portions of streets, as measured perpendicularly from the right-of-way line thereof: International Boulevard; Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying between Interstate 980 and 580; that portion of Edes Avenue lying between Clara Street and Bergedo Drive, shall require a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.
 3. In addition to the criteria prescribed elsewhere in the zoning regulations, a land use permit for an Alcoholic Beverage Sales Commercial Activity located within an Alcoholic Beverage Sales license overconcentrated area shall only be granted, and a finding of Public Convenience or Necessity made, if the proposal conforms to all of the following three (3) criteria:
 - a. That a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to alcohol; and
 - b. That the overall project will have a positive influence on the quality of life for the community in which it is located, providing economic benefits that outweigh

OAKLAND

anticipated negative impacts, and that will not result in a significant increase in calls for police service; and

- c. That alcohol sales are customarily associated with, and are appropriate, incidental, and subordinate to, a principal activity on the lot.
4. In addition to the above criteria, projects outside of the Central District, the Hegenberger Road Corridor, and the D-CO-2 and D-CO-3 Zones shall meet all of the following criteria to make a finding of Public Convenience or Necessity, with the exception of those projects that will result in twenty-five (25) or more full time equivalent (FTE) employees and will result in a total floor area of twelve thousand (12,000) square feet or more:
 - a. The proposed project is not within one thousand (1,000) feet of another alcohol outlet (not including Full Service Restaurant Commercial Activities), school, licensed day care center, public park or playground, churches, senior citizen facilities, and licensed alcohol or drug treatment facilities; and
 - b. Police department calls for service within the "beat" where the project is located do not exceed by twenty percent (20%), the average of calls for police service in police beats Citywide during the preceding one (1) calendar year.
5. See Chapter 17.156 for Deemed Approved Alcoholic Beverage Sale regulations.

C. Special Restrictions Applying to Fast-Food Restaurants.

1. No Fast-Food Restaurant Commercial Activity shall be located within a one thousand (1,000) foot radius of an existing or approved Fast-Food Restaurant, as measured from the center of the front property line of the proposed site, except in the Central District (defined for the purposes of this Chapter only as within the boundaries of 1-980 and Brush Street to the west; both sides of 27th Street to the North; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south), within the main building of Shopping Center Facilities, and in the D-CO-2 and D-CO-3 Zones.
2. Fast-Food Restaurants with Drive-Through Facilities shall not be located within three hundred (300) feet of a lot line adjacent to the Hegenberger Road or Oakport Street right-of-way, or five hundred (500) feet of a public or private elementary school, park, or playground.
3. Access. Ingress and egress to Fast-Food Facilities shall be limited to commercial arterial streets rather than residential streets. No direct access shall be provided to adjacent residential streets which are less than thirty-two (32) feet in pavement width. Exceptions to either of the requirements may be obtained where the City Traffic Engineer determines that compliance would deteriorate local circulation or jeopardize the public safety. Any such determination shall be stated in writing and shall be supported with findings. Driveway locations and widths and entrances and exits to Fast-Food Facilities shall be subject to the approval of the City Traffic Engineer.
4. Trash and Litter. Disposable containers, wrappers and napkins utilized by Fast-Food Restaurants shall be imprinted with the restaurant name or logo.
5. Vacated/Abandoned Fast-Food Facilities. The project sponsor of a proposed Fast-Food Facility shall be required to obtain a performance bond, or other security acceptable to the City Attorney, to cover the cost of securing and maintaining the facility and site if it is abandoned or vacated within a prescribed high-risk period. As used in this code, the words "abandoned" or "vacated" shall mean a facility that has not been operational for a period of thirty (30) consecutive days, except where

ATTACHMENT C - ABC Common Restaurant License Types

**COMMON ABC LICENSE TYPES
AND THEIR BASIC PRIVILEGES**

LICENSE TYPE	DESCRIPTION
01	BEER MANUFACTURER - (Large Brewery) Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
02	WINEGROWER - (Winery) Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
20	OFF SALE BEER & WINE - (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
21	OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
23	SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery) Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
40	ON SALE BEER - (Bar, Tavern) Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.
41	ON SALE BEER & WINE - EATING PLACE - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
42	ON SALE BEER & WINE - PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
47	ON SALE GENERAL - EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
48	ON SALE GENERAL - PUBLIC PREMISES - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
49	ON SALE GENERAL - SEASONAL - Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.



ATTACHMENT D - Prior Ordinances

INTRODUCED BY COUNCILMAN _____

Mark B. Shroyer

Deputy CITY ATTORNEY

ORDINANCE No. 9554 C.M.S.

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO ADD OR REVISE REGULATIONS PERTAINING TO CONVENIENCE MARKETS, FAST-FOOD RESTAURANTS AND ALCOHOLIC BEVERAGE SALES ACTIVITIES; MAKING RELEVANT FINDINGS AND DETERMINATIONS; REPEALING ORDINANCES No. 9507, 9508, AND 9515 C.M.S.; AND CERTIFYING COMPLIANCE WITH ENVIRONMENTAL QUALITY REQUIREMENTS.

The Council of the City of Oakland does ordain as follows:

SECTION I. DECLARATION OF FINDINGS AND INTENT. The Council hereby finds and declares as follows:

(a) Convenience markets and fast-food restaurants have the potential to cause or aggravate, and have in actual cases caused or aggravated, special problems affecting the areas surrounding them. These include litter, late-hour operation near residences, undesirable design and appearance, traffic and parking problems, loitering, crime, and vandalism.

(b) Establishments, other than full-service restaurants, which sell alcoholic beverages have the potential to cause or aggravate, and have in actual cases caused or aggravated, similar special problems for the areas surrounding them. These include rowdyism, loitering, crime, and vandalism, litter, late-hour operation near residences, undesirable design and appearance, and traffic and parking problems. Such establishments which sell for off-premises consumption are at least as prone to many of these problems, for example, loitering, as are those establishments which sell for on-premises consumption.

(c) The problems associated with establishments selling alcoholic beverages are particularly acute in certain specific sections of the city which in general have special problems of physical or visual blight, neighborhood instability, and conditions of urban disruption and deterioration.

(d) The public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by adoption of the Planning Code amendment set forth in this ordinance.

SECTION 2. COMPLIANCE WITH ENVIRONMENTAL QUALITY REQUIREMENTS.

The Council hereby finds and determines that the requirements of the California Environmental Quality Act, the Guidelines as prescribed by the Secretary for Resources, and the provisions of the City's Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act have been satisfied; that this action on the part of the City Council will not have a significant effect on the environment; and that Negative Declarations have been prepared. This ordinance complies with the California Environmental Quality Act, and the Review Officer is hereby directed to file Notices of Determination with the Alameda County Clerk.

SECTION 3. ADDITIONS TO TEXT OF PLANNING CODE. The following additions are hereby made to the Oakland Planning Code as follows:

SECTION 2110(f) ALCOHOLIC BEVERAGE. Alcohol, spirits, liquor, beer, or any liquid or solid containing alcohol, spirits, wine or beer, which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

SECTION 2117(e) FULL-SERVICE RESTAURANT. A place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant.

SECTION 2361 CONVENIENCE MARKET COMMERCIAL ACTIVITIES. Convenience Market Commercial Activities include the retail sale of food, beverages, and small personal convenience items, primarily for off-premises consumption and typically found in establishments with long or late hours of operation and a relatively small building; but exclude delicatessens and other specialty food shops and also exclude establishments which have a sizeable assortment of fresh fruits and vegetables and fresh-cut meat. They also include certain activities accessory to the above, as specified in Section 2211.

SECTION 2362 FAST-FOOD RESTAURANT COMMERCIAL ACTIVITIES. Fast-Food Restaurant Commercial Activities include the retail sale of ready-to-eat cooked foods and beverages, for on- or off-premises consumption, wherever the foods and beverages are available upon a short waiting time and are primarily served in or on disposable wrappers, containers, or plates; but exclude establishments which have an interior seating capacity for 65 or more persons, and off-street parking for 25 or more automobiles. They also include certain activities accessory to the above, as specified in Section 2211.

SECTION 2363 ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITIES. Alcoholic Beverage Sales Commercial Activities include the retail sale for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, but exclude full-service restaurants. They also include certain activities accessory to the above as specified in Section 2211.

SECTION 7023 SPECIAL REGULATIONS APPLYING TO CONVENIENCE MARKET, FAST-FOOD RESTAURANT, AND ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITIES.

(a) Use Permit Criteria. A Conditional Use Permit for any conditionally permitted Convenience Market, Fast-Food Restaurant, or Alcoholic Beverage Sales Commercial Activity may be granted only upon determination that the proposal conforms to the General Use Permit Criteria set forth in the CONDITIONAL USE PERMIT PROCEDURE at Section 9200, to any and all applicable use permit criteria set forth in the particular individual ZONE

REGULATIONS, and to all of the following Use Permit Criteria:

1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.
2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds.
3. That the proposal will not interfere with the movement of people along an important pedestrian street.
4. That the proposed development will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area.
5. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression.
6. That adequate litter receptacles will be provided where appropriate.
7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

(b) Minimum Distance Between Alcoholic Beverage Sales Establishments Along Certain Streets. Along the streets or portions thereof indicated below, no Alcoholic Beverage Sales Commercial Activity shall be located closer than 1,000 feet from any other Alcoholic Beverage Sales Commercial Activity. This regulation shall apply to a depth of 200 feet on each side of such streets or portions thereof, as measured perpendicularly from the right-of-way line thereof.

1. all of East 14th Street.
2. all of Foothill Boulevard.
3. all of MacArthur Boulevard and West MacArthur Boulevard.
4. all those portions of San Pablo Avenue lying north of 16th Street.
5. that portion of Edes Avenue lying between Clara Street and Bergedo Drive.

Sections 4308, 4408, 4458, 4508, 4533, 4558, 4608, 4833, 4858, 4883 and 5408 are hereby added to the Oakland Planning Code, each of them to consist, aside from the sections' own number, of the following wording:

SPECIAL REGULATIONS APPLYING TO CONVENIENCE MARKETS, FAST-FOOD RESTAURANTS, AND ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITIES. See Section 7023.

The following subsection is hereby added to Sections 5608, 5708, and 5808 of the Oakland Planning Code, to consist in each case of the following wording:

(c) Convenience Markets, Fast-Food Restaurants, and Alcoholic Beverage Sales. See Section 7023.

SECTION 4. AMENDMENTS TO TEXT OF PLANNING CODE. The following amendments are hereby made to the Oakland Planning Code as follows:

Sections 2210, 3854, 3904, 6104, 6154, 6304, and 7812(a) of the Oakland Planning Code are hereby amended to insert the following in the list of Commercial Activities, in each case immediately above the term "Convenience Sales and Service":

Convenience Market
Fast-Food Restaurant
Alcoholic Beverage Sales

The term "Food Sales and Service" is hereby replaced by the term "General Food Sales" wherever the former term now appears in the following sections of the Oakland Planning Code: 2210, 3854, 3904, 4253, 4303, 4353, 4358, 4403, 4453, 4478, 4503, 4528, 4553, 4603, 4828, 4853, 4878, 4903, 5403, 5603, 5703, 5803, 6104, 6154, 6304, 6453, 7422, 7523, and 7812.

SECTION 2211 is hereby amended to change the third sentence thereof to read as follows:

Such accessory activities include, but are not limited to, the activities indicated below, but exclude the sale of alcoholic beverages to the general public except at a full-service restaurant.

SECTION 2213 is hereby amended to change the wording "General Wholesale Sales or Scrap Operation" to "Alcoholic Beverage Sales, General Wholesale Sales, or Scrap Operation."

Sections 2360, 4904, 4908, 7003, 7402, and 7403 of the Oakland Planning Code are hereby amended to read as follows:

SECTION 2360 GENERAL FOOD SALES COMMERCIAL ACTIVITIES. General Food Sales Commercial Activities include the retail sale from the premises, of food or beverages for home consumption, as well as the retail sale of prepared food or beverages for on-premises consumption, but exclude the activities described in Sections 2361, 2362, and 2363. They also include certain activities accessory to the above, as specified in Section 2211.

SECTION 4904 CONDITIONALLY PERMITTED ACTIVITIES. The following activities, as described in the USE CLASSIFICATIONS at Section 2200, may be permitted upon the granting of a Conditional Use Permit pursuant to the CONDITIONAL USE PERMIT PROCEDURE at Section 9200:

(a) Civic Activities:

Community Assembly
Extensive Impact

(b) Commercial Activities:

Alcoholic Beverage Sales

(c) Manufacturing Activities:

Custom
Light

(d) Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 7012.

SECTION 4908 SPECIAL REGULATIONS APPLYING TO CERTAIN COMMERCIAL ACTIVITIES. The maximum floor area devoted to General Food Sales, Convenience Market, Fast-Food Restaurant, Alcoholic Beverage Sales, or Convenience Sales and Service Commercial Activities by any single establishment shall be 3,000 square feet. See also Section 7023.

SECTION 7003 EFFECT OF PRIOR PERMITS.

(a) Building and Sign Permits. Whenever any building permit or sign permit has been issued or applied for prior to the effective date of the ZONING REGULATIONS or of any subsequent rezoning or other amendment thereto, and the proposed uses or change therein would not conform to said regulations or amendment

thereto, such uses may nevertheless be developed or changed to the extent authorized by the permit; provided, however, that for Convenience Markets, Fast-Food Restaurants, and Alcoholic Beverage Sales Commercial Activities this exception shall apply to the requirement for a Conditional Use Permit and to the provisions of Section 7023 only if the building permit or sign permit has actually been issued prior to the effective date of said section. If any such building permit or sign permit expires it shall not be renewed. Such uses shall be deemed nonconforming uses, and shall be subject to the NONCONFORMING USE REGULATIONS at Section 7400.

(b) Conditional Use Permits, Variances, and Other Special Zoning Approvals. Except as otherwise provided in Section 7004, whenever any subsisting conditional use permit, variance, or other special zoning approval has been granted or applied for prior to the effective date of the ZONING REGULATIONS or of any subsequent rezoning or other amendment thereto, and the proposed or affected uses or change therein would not or do not conform to said regulations or amendment thereto, such uses may nevertheless, to the extent authorized by the zoning approval, be developed or changed, and continued or maintained indefinitely except as otherwise specified in such approval. Such uses shall be subject to the plans and all other special conditions upon the basis of which the previous approvals were granted.

(c) Alcoholic Beverage Control Licenses. On premises for which a valid State of California Alcoholic Beverage Control license had been issued, and which premises had been used in the exercise of the rights and privileges conferred by the license at a time immediately prior to the effective date of Section 7023, the premises may hereafter be used in the exercise of the same rights and privileges without requiring a Conditional Use Permit or having to meet the provisions of the aforesaid section. Such use shall be deemed a nonconforming use, and shall be subject to the NONCONFORMING USE REGULATIONS except as otherwise provided in Section 7402 thereof. For the purposes of this subsection, the word "premises" shall mean and include only the actual space within a building devoted to the sale of alcoholic beverages on said effective date.

SECTION 7402 PRIOR PERMITS. (a) Building and Sign Permits and Special Zoning Approvals. As specified in Section 7003, uses may in certain cases be established, constructed, altered, extended, substituted, moved, or otherwise changed on the basis of building or sign permits or Conditional Use Permits, Variances, or other special zoning approvals applied for or granted before the effective date of the ZONING REGULATIONS, or of any subsequent rezoning or other amendment thereto, although said regulations or amendment thereto would otherwise prohibit such development or change.

(b) Alcoholic Beverage Control Licenses. Notwithstanding the provisions of the NONCONFORMING USE REGULATIONS, said provisions shall not apply to the extent that they would preclude the

exercise of the same rights and privileges as those conferred by a valid State of California Alcoholic Beverage Control license for premises which had been used in the exercise of such rights and privileges at a time immediately prior to the effective date of Section 7023. For the purposes of this subsection, the word "premises" shall mean and include only the actual space within a building devoted to the sale of alcoholic beverage.

SECTION 7403 RIGHT TO CONTINUE NONCONFORMING USE, SUBJECT TO LIMITATIONS. A nonconforming use which is in existence on the effective date of the ZONING REGULATIONS or of any subsequent rezoning or other amendment thereto which makes such use nonconforming, and which existed lawfully under the previous zoning controls, or which is subsequently developed or changed pursuant to Section 7402, may thereafter be continued and maintained indefinitely, and the rights to such use shall run with the land, except as otherwise specified in the NONCONFORMING USE REGULATIONS. However, no substitution, extension, or other change in activities and no alteration or other change in facilities is permitted except as otherwise provided in Section 7402 and except as specifically provided hereinafter.

Sections 2361, 2362, 2366, and 2367 of the Oakland Planning Code are hereby renumbered, respectively, as Sections 2364, 2366, 2368, and 2369.

Section 2363 of the Oakland Planning Code is hereby renumbered and otherwise amended so as to read as follows:

SECTION 2367 GENERAL RETAIL SALES COMMERCIAL ACTIVITIES. General Retail Sales Commercial Activities include the retail sale or rental from the premises, primarily for personal or household use, of goods consisting primarily of items other than food and beverages and those convenience items described in Section 2364; but exclude sale or rental of motor vehicles, except for parts and accessories, and sale of materials used in construction of buildings or other structures, except for paint, fixtures, and hardware. They also include certain activities accessory to the above, as specified in Section 2211.

Sections 3858 and 3908 of the Oakland Planning Code are hereby amended to replace the wording "Food Sales and Service and Convenience Sales and Service" with the wording "General Food Sales, Convenience Market, Fast-Food Restaurant, Alcoholic Beverage Sales, and Convenience Sales and Service."

Sections 3858, 3908, 3911, 4258, 4358, 4483, 4486, 4861, 4908, 6108, 6111, 6158, and 6161 of the Oakland Planning Code are hereby amended to add, at the end of each such section the following sentence:

See also Section 7023.

SECTION 3861, subsection (a) of the Oakland Planning Code is hereby amended to read as follows:

(a) General Food Sales, Convenience Market, Fast-Food Restaurant, Alcoholic Beverage Sales, or Convenience Sales and Service. A Conditional Use Permit for General Food Sales, Convenience Market, Fast-Food Restaurant, Alcoholic Beverage Sales, or Convenience Sales and Service Commercial Activities may be granted only upon determination that the proposal conforms to the General Use Permit Criteria set forth in the CONDITIONAL USE PERMIT PROCEDURE at Section 9200, and that the proposed activities are intended primarily to serve residents of the facility within which the activities are to be located. See also Section 7023.

Sections 4254, 4304, 4354, 4404, 4454, 4479, 4504, 4529, 4554, 4604, 4829, 4854, 4879, 5404, 5604, and 6454 of the Oakland Planning Code are hereby amended to insert the following at the top of the list of types immediately following the term "Commercial Activities":

Convenience Market
Fast-Food Restaurant
Alcoholic Beverage Sales

SECTION 4258 of the Oakland Planning Code is hereby amended to change its title from "MAXIMUM SIZE OF COMMERCIAL ESTABLISHMENTS" to "SPECIAL REGULATIONS APPLYING TO COMMERCIAL ACTIVITIES."

SECTIONS 4358 and 7523 of the Planning Code are hereby amended to insert the wording "Convenience Market, Fast-Food Restaurant, Alcoholic Beverage Sales," immediately before the term "Convenience Sales and Service."

SECTION 4408 of the Oakland Planning Code is hereby renumbered SECTION 4411, and the following sentence is hereby added to the end of said section: "See also Section 7023."

SECTION 4483 of the Oakland Planning Code is hereby amended to change its title from "RESTRICTIONS ON SIZE OF COMMERCIAL AND MANUFACTURING ESTABLISHMENTS" to "SPECIAL REGULATIONS APPLYING TO COMMERCIAL AND MANUFACTURING ACTIVITIES."

Sections 4903, 5703 and 5803 of the Oakland Planning Code are hereby amended to insert the following in the list of Commercial Activities, in each case immediately above the term "Convenience Sales and Service.":

Convenience Market
Fast-Food Restaurant

Sections 5608, 5708, and 5808 of the Oakland Planning Code

are hereby amended to change their titles in each case from "RESTRICTIONS ON SIZE OF CERTAIN COMMERCIAL AND CIVIC ACTIVITIES" to "SPECIAL REGULATIONS APPLYING TO CERTAIN COMMERCIAL AND CIVIC ACTIVITIES."

Sections 5704 and 5804 of the Oakland Planning Code are hereby amended to insert the following at the top of the list of types immediately following the term "Commercial Activities":

Alcoholic Beverage Sales

SECTION 7422 of the Oakland Planning Code is hereby amended to revise the second sentence of subsection (a) to read as follows:

Changes other than substitutions may be made in such activities, but no substitution or other change may be made which would result in a greater degree of nonconformity with respect to any applicable provision of the PERFORMANCE STANDARDS at Section 7700, or wherever the nonconforming activity is conditionally permitted, with respect to applicable off-street parking or loading requirements; provided further that in the case of Alcoholic Beverage Sales Commercial Activities, no change shall be made in the activity which would require a different type of Alcoholic Beverage Control license from the State of California, except upon the granting of a conditional use permit pursuant to the CONDITIONAL USE PERMIT PROCEDURE at Section 9200.

SECTION 7422(a) of the Oakland Planning Code is hereby amended to insert the following types immediately above the term "Convenience Sales and Service" in the middle column of the table:

Convenience Market
Fast-Food Restaurant
Alcoholic Beverage Sales

SECTION 7423, subsection (a) is hereby amended to add the following sentence at the end of paragraph 1:

However, in the case of an establishment classified as an Alcoholic Beverage Sales Commercial Activity, the total floor area, open areas, or outside building dimensions occupied by the establishment may be increased as long as the amount of space actually devoted to the sale of alcoholic beverages is not increased by more than 20 per cent of that already existing.

SECTION 7423, subsection (a) is hereby amended to add the following paragraph, and to renumber existing paragraphs 2, 3 and 4, respective, as 3, 4 and 5:

2. In the case of an establishment classified as an Alcoholic Beverage Sales Commercial Activity, the percentage of actual floor area devoted to the sale of alcoholic beverages shall not be increased by more than 20 per cent of that already existing, except upon the granting of a conditional use permit pursuant to the CONDITIONAL USE PERMIT PROCEDURE at Section 9200.

SECTION 7513, subsection (a) of the Oakland Planning Code is hereby amended to read as follows:

Commercial Activity	Zone	Minimum Total Size for Which Parking Required	Requirement
(a) General Food Sales. Convenience Market. Fast-Food Restaurant. Alcoholic Beverage Sales.	C-52, C-55.	---	No spaces required.
	C-45, C-51, S-2.	10,000 square feet of floor area.	One space for each 450 square feet of floor area.
	C-10, C-31, C-35.	3,000 square feet of floor area.	One space for each 300 square feet of floor area.
	Any other zone.	3,000 square feet of floor area.	One space for each 200 square feet of floor area.

SECTION 9201(a)2 of the Oakland Planning Code is hereby amended to insert the wording "Convenience Market, Fast-Food Restaurant, Alcoholic Beverage Sales", immediately before the term "Automotive Servicing."

SECTION 9204 of the Oakland Planning Code is hereby amended to replace the wording "all other applicable use permit criteria" with the wording "any and all applicable use permit criteria in the individual ZONE REGULATIONS and in Section 7000 through Section 7039, inclusive."

SECTION 5. MORATORIUMS REPEALED. Ordinances No. 9507, 9508, and 9515 C.M.S. are hereby repealed.

IN COUNCIL, OAKLAND, CALIF., DEC 27 1977, 19

PASSED BY THE FOLLOWING VOTE:

AYES — CHIALVO, ENG, GILMORE, MAGGIORA, MOORE, OGAWA, , VUKASIN
AND *Vice President Sutter - 8*

NOES — *NONE*

ABSENT — *Wilson - 1*

ABSTENTION — *NONE*

ATTEST:

Lionel Wilson
MAYOR OF THE CITY OF OAKLAND, CALIF.

ATTEST:

Anna Johnson
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIF.

INTRODUCED BY COUNCILMEMBER _____

Mark P. Wall
CITY ATTORNEY

7/21

ORDINANCE No. 11491 C. M. S.

AN ORDINANCE AMENDING SECTIONS 7023(b) AND 7422(a)(4) OF THE OAKLAND PLANNING CODE TO ESTABLISH GREATER CONTROLS ON ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITIES CITYWIDE

WHEREAS, the City Planning Department initiated, on behalf of the Health, Human Services and The Family Committee of the City Council, a study of Alcoholic Beverage Sales Commercial Activities Citywide; and

WHEREAS, the findings of this study demonstrated a proliferation of these alcoholic beverage sales activities when compared with population numbers of the City and County; and

WHEREAS, adverse land use impacts associated with these types of activities, including traffic problems, high rates of crime, citizen complaints, evidence of public nuisance, and revocation hearings before the City Planning Commission have occurred; and

WHEREAS, the Health, Human Services and The Family Committee of the City Council endorsed the study recommendations to implement new controls on Alcoholic Beverage Sales Commercial Activities on a Citywide basis; and

WHEREAS, the City Planning Commission received a request from the Committee to amend pertinent sections of the Oakland Planning Code concerning the retail sale of alcoholic beverages to implement the new controls; and

WHEREAS, a duly noticed public hearing on this matter was held by the City Planning Commission on May 27, 1992; and

WHEREAS, the City Planning Commission determined that the existing provisions of the Oakland Planning code governing Alcoholic beverage Sales Commercial Activities were inadequate or otherwise contrary to the public interest; and

WHEREAS, thereafter on July 8, 1992 the City Planning Commission voted to recommend amending the Oakland Planning Code as set forth below; and

WHEREAS, said recommendation of the City Planning Commission has come regularly on for hearing before the City Council on July 21, 1992; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the Guidelines as prescribed by the Secretary for Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for implementation of the California Environmental Quality Act: City of Oakland, as amended, have been satisfied, and that in accordance with Section 15061 (b)(3) of the California Administrative Code it can be seen with certainty that there is no possibility that the amendments in question may have a significant effect on the environment; and

WHEREAS, the Council finds and determines that the public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the proposed amendments; now, therefore,

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

SECTION 1. This ordinance is exempt from the California Environmental Quality Act, and the Environmental Review Officer is hereby directed to file a Notice of Exemption with the Alameda County Clerk.

SECTION 2. Section 7023(b) of the Oakland Planning Code is hereby amended to read as follows:

"(b) Special Restrictions on Establishments Selling Alcoholic Beverages.

- I. No Alcoholic Beverage Sales Commercial Activity shall be located closer than 1,000 feet to any other Alcoholic Beverage Sales Commercial Activity, except
 - (a) on-sale-retail licenses located in the Central District (defined as within the boundaries of I-980 and Brush Street to the West; 27th Street to the North; Harrison Street/Lake Merritt and the Lake Merritt Channel to the East; and the Estuary to the South); or
 - (b) if the activity is in conjunction with a Full-Service Restaurant.
- II. Alcoholic Beverage Sales Activities in conjunction with a Full Service Restaurant and located within any of the following areas applied to a depth of 200 feet on each side of the identified streets and portions of streets, as measured perpendicularly from the right-of-way line thereof: E. 14th Street; Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying north of 16th Street; that portion of Edes Avenue lying between Clara Street and Bergedo Drive, shall require a conditional use permit pursuant to the **CONDITIONAL USE PERMIT PROCEDURE** at Section 9200."

SECTION 3. Section 7422(a)(4) of the Oakland Planning Code is hereby amended to read as follows:

"(a) Activity Nonconforming Because It Is Not a Permitted Activity.

- 4. For any nonconforming Alcoholic Beverage Sales Commercial Activity presently located in any zone in which it is not a permitted activity, no change shall be made in the activity which change requires obtaining a different type of alcoholic beverage sale retail license from the State of California Department of Alcoholic Beverage Control. Further, no change shall be made in any nonconforming activity involving the sale of alcoholic beverages at a full service restaurant in any location described by Section 7023(b)(II), which change requires obtaining a different type of alcoholic beverage sale retail license from the State of California Department of Alcoholic Beverage Control, unless a conditional use permit is granted pursuant to the CONDITIONAL USE PERMIT PROCEDURE at Section 9200."

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 28 1992, 19 _____

PASSED BY THE FOLLOWING VOTE:

AYES— BAZILE, CANNON, GIBSON HASKELL, MILEY, MOORE, OGAWA, RILES, SPEES, and PRESIDENT HARRIS , - 9

NOES— NONE

ABSENT— NONE

ABSTENTION— NONE

ATTEST: 

ARRECÉ JAMESON
City Clerk and Clerk of the Council
of the City of Oakland, California

Mark P. Wall
CITY ATTORNEY

ORDINANCE No. 11831 C. M. S.

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO ADOPT STANDARD CRITERIA FOR FINDINGS OF "PUBLIC CONVENIENCE AND NECESSITY" FOR ALCOHOLIC BEVERAGE SALES LICENSES IN OVERCONCENTRATED AREAS OF THE CITY, TO GRANT EXCEPTIONS TO THE 1,000 FT. SEPARATION REQUIREMENT FOR LARGE RETAILERS, TO GRANT AUTHORITY TO THE CITY PLANNING COMMISSION TO MAKE FINDINGS OF "PUBLIC CONVENIENCE AND NECESSITY", AND TO MAKE FINDINGS OF "PUBLIC CONVENIENCE AND NECESSITY" FOR ESTABLISHMENTS WITH APPROVED PLANNING PERMITS

WHEREAS, the California Legislature adopted Assembly Bill 2897 that added Section 23958.4 to the Business and Professions Code in September, 1994; and

WHEREAS, this legislation changed the definition of undue concentration of retail alcoholic beverage sales licenses to include police reporting districts with rates of crime that are 20 percent or more above the average for the local jurisdiction and census tracts in which the number of per capita licenses exceed the County average; and

WHEREAS, findings of "public convenience and necessity" must be made by the local governing body before the Department of Alcoholic Beverage Control will grant licenses in overconcentrated areas; and

WHEREAS, the Department of Alcoholic Beverage Control allows each jurisdiction to define "public convenience and necessity" and decide what entity should act as the local governing body to make these required findings; and

WHEREAS, on May 23, 1995, the City Council adopted Resolution No. 71876 adopting a definition of "public convenience and necessity" and indicated at the time of adoption that the described criteria should be added to the Oakland Planning Code; and

WHEREAS, on May 23, 1995, the City Council indicated that it wished to amend the permit processing procedures for Major Variances for alcoholic beverage sales activities; and

WHEREAS, on May 23, 1995, the City Council indicated that it wished to grant exceptions to the 1,000 ft. separation requirement to large alcoholic beverage sales establishments; and

WHEREAS, a duly noticed public hearing was held on this matter by the City Planning Commission on July 26, 1995; and

WHEREAS, the City Planning Commission voted to recommend amending the Oakland Planning Code as set forth below; and

WHEREAS, said recommendation of the City Planning Commission came regularly on for hearing before the City Council on September 23, 1995; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the State CEQA Guidelines, and the City CEQA Procedures have been satisfied, and in accordance with Section 15061(b)(3) of the State CEQA Guidelines it can be seen with certainty that there is no possibility that this action on the part of the City Council may have a significant effect on the environment, and therefore this action is not subject to the California Environmental Quality Act; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by the proposed amendments; now, therefore

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

Section 1. The City Council determines that this Ordinance complies with California Environmental Quality Act and directs the Review Officer to file a Notice of Exemption with the Alameda County Clerk.

Section 2. Section 2110(h) of the Oakland Planning Code is hereby added to read as follows:

2110 (h) - Alcoholic Beverage License Overconcentrated Areas - a police beat with crime rates that exceed the city median by 20% or more or a census tract in which the per capita number of on-sale or off-sale retail Alcoholic Beverage Sales licenses exceeds the Alameda County median.

Section 3. Section 7023(b)1.c of the Oakland Planning Code is hereby added to read as follows:

(b) Special Restrictions on Establishments Selling Alcoholic Beverages.

1. No Alcoholic Beverage Sales Commercial Activity shall be located closer than 1,000 feet to any other Alcoholic Beverage Sales Commercial Activity, except
 - a. on-sale retail licenses located in the Central District (defined as within the boundaries of I-980 and Brush street to the West; 27th Street to the North; Harrison Street/Lake Merritt and the Lake Merritt Channel to the East; and the Estuary to the South); or
 - b. if the activity is in conjunction with a Full-Service Restaurant

- c. establishments with 25 or more full time equivalent (FTE) employees and a total floor area of 20,000 sf. or more

Section 4. Section 7023(b)3 of the Oakland Planning Code is hereby added to read as follows:

- 3. In addition to the criteria prescribed elsewhere in the ZONING REGULATIONS, a land use permit for an Alcoholic Beverage Sales Activity located within an Alcoholic Beverage Sales License Overconcentrated Area shall be granted only if the proposal conforms to one or more of the following criteria for findings of "public convenience and necessity", as well as any and all other applicable land use permit criteria:
 - a. That the proposed project will serve an unmet or underserved need or population within the Oakland community;
 - b. That the proposed project will enhance physical accessibility to needed goods or services; or,
 - c. That the proposed project will further the City's economic development goals and will not place burdensome demands on existing public services, particularly public safety-related services.

Section 5. Section 9203(a)5 of the Oakland Planning Code is hereby added to read as follows:

9203 PROCEDURE FOR CONSIDERATION

(a) Major Conditional Use Permits.

- 5. Alcoholic Beverage Sales Activities in Alcoholic Beverage Sales License Overconcentrated Areas. In addition to following the provisions of Section 9203(a).1, the City Planning Commission shall also determine whether the proposal conforms to the criteria for findings of "Public Convenience and Necessity" set forth in Section 7023(b)3.

Section 6. Section 9603(a)3 of the Oakland Planning Code is hereby added to read as follows:

9603 PROCEDURE FOR CONSIDERATION

(a) Major Variances.

3. *Alcoholic Beverage Sales Commercial Activities.* In addition to following the provisions of Section 9603(a).1, the City Planning Commission shall also determine whether the proposal conforms to the criteria for findings of "Public Convenience and Necessity" set forth in Section 7023(b)3.

Section 7. That findings of "public convenience and necessity" are hereby made for all Alcoholic Beverage Sales Activities located in areas of overconcentration that have validly issued land use permits in effect prior to the effective date of this ordinance and are subject to the requirements of Business and Professions Code § 23958.4.

Introduced: 10/17/95

IN COUNCIL, OAKLAND, CALIFORNIA, OCT 24 1995, 19 _____

PASSED BY THE FOLLOWING VOTE:

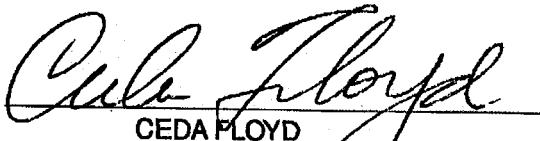
AYES— BAYTON, DE LA FUENTE, JORDAN, MILEY, ~~MOORE~~ ^{CHANG, RUSSO}, ~~OGAWA~~, SPEES, WOODS-JONES, and PRESIDENT HARRIS — 9

NOES— NONE

ABSENT— NONE

ABSTENTION— NONE

ATTEST:



CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2013 MAY 30 PM 5:11

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

Ellen Chen

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. 13172 C.M.S.

AN ORDINANCE, RECOMMENDED BY THE PLANNING COMMISSION, TO AMEND THE OAKLAND PLANNING CODE TO: 1) UPDATE REFERENCES, REDUCE REDUNDANCY, AND CLARIFY LANGUAGE IN VARIOUS CHAPTERS OF THE PLANNING CODE; 2) MODIFY TRUCK WEIGHT CLASSIFICATIONS LANGUAGE TO CONFORM WITH INDUSTRY STANDARDS; 3) MODIFY THE SETBACK REQUIREMENT FOR THE PORTION OF BUILDINGS ABOVE 55 FEET IN HEIGHT IN THE CBD-R ZONE; 4) ADD DESIGN REVIEW REQUIREMENT FOR RESIDENTIAL FACILITIES AND HISTORIC PROPERTIES IN THE CIX, IG, AND IO ZONES; 5) ELIMINATE THE INCREASED PARKING REQUIREMENT FOR EXPANSIONS OF ACTIVITIES ACROSS ZONE BOUNDARIES; AND 6) ADD SIDEWALK CAFES AS A PERMITTED FACILITY IN THE M- INDUSTRIAL ZONES.

WHEREAS, in March of 1998, the City adopted the Land Use and Transportation Element (LUTE) of the Oakland General Plan; and

WHEREAS, one of the objectives of the LUTE is to create a 'user friendly' Planning Code document that minimizes the complexity of regulations; and

WHEREAS, the Planning Code contains overly complex language, is difficult to navigate and needs formatting and reference updates, as well as organizational improvements; and

WHEREAS, there are inconsistencies, typographical errors and omissions in the Planning Code text; and

WHEREAS, the current zoning regulations as they relate to truck weight classifications are not in conformance with industry standards; and

WHEREAS, the current zoning regulations pertaining to the setback requirement for the portion of buildings above 55 feet in height in the Central Business District - Residential (CBD-R) Zone are potentially too restrictive in a downtown context as envisioned by the Oakland General Plan; and

WHEREAS, due to an oversight in previous text amendments, the zoning regulations do not include a requirement for design review for residential facilities and historic properties in the CIX, IG, and IO industrial zones, as is currently required in the M- industrial zones; and

WHEREAS, the increased parking requirement for expansions of activities across zone boundaries is potentially too restrictive in corridors where development is encouraged; and

WHEREAS, due to an oversight in a previous text amendment that added restaurants as permitted activities in the M- industrial zones, sidewalk cafes were inadvertently omitted as permitted facilities; and

WHEREAS, the City of Oakland's Planning Division staff has prepared the following amendments to the Oakland Planning Code to correct the above code issues, update references, reduce redundancy, and clarify language in various chapters of the Planning Code in order to better promote the public's health, safety and general welfare; and

WHEREAS, on April 17, 2013, at a duly noticed public hearing, the Zoning Update Committee recommended approval of the proposed Planning Code Amendments; and

WHEREAS, on May 15, 2013, at a duly noticed public hearing, the Planning Commission recommended approval of the proposed Planning Code Amendments; and

WHEREAS, after a duly noticed public meeting on June 11, 2013, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on June 18, 2013 to consider the proposal; and

WHEREAS, the proposed amendments to the Planning Code rely on the previously certified Final Environmental Impact Reports for the Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland Central City East, Coliseum and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "EIRs"); and

WHEREAS, the EIRs provide analysis of the environmental impacts of the proposed amendments and support all levels of approval necessary to implement the Planning Code amendments; and

WHEREAS, the proposed amendments to the Planning Code would not result in any significant effect that has not already been analyzed in the EIRs, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIRs; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously

identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3); and

WHEREAS, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment); now, therefore,

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

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2. The Environmental Review Officer shall file a Notice of Exemption/Notice of Determination, and an Environmental Declaration under the California Fish and Game Code (Section 711.4) with the County of Alameda.

Section 3. Title 17 of the Oakland Planning Code is hereby amended pursuant to *Exhibit A* attached hereto and hereby incorporated by reference. Additions to Title 17 of the Oakland Planning Code are shown in Exhibit A as underline and omissions are shown as ~~strike through~~.

Section 4. This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired, or (b) to zoning applications approved by the City and not yet expired, or to (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

Section 5. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 6. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

Section 7. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. The application, including all accompanying papers;
2. All final staff reports, decision letters and other documentation and information produced by or on behalf of the City;
3. All oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application;
4. All matters of common knowledge and all official enactments and acts of the City,

such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 8. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 2 2013

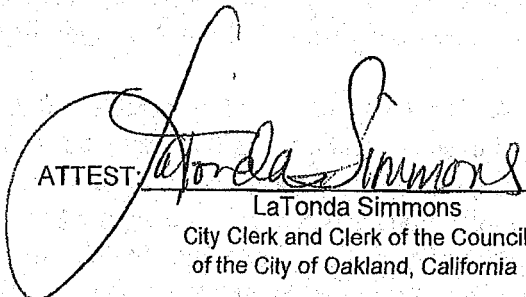
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, ~~GIBSON MCELHANEY~~, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN - 7

NOES- 0

ABSENT- Gibson McElhaneey - 1

ABSTENTION- 0

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: July 10, 2013

Introduction Date JUN 18 2013

ATTACHMENT E - ABC Statistics for Restaurants in Oakland



California Department of Alcoholic Beverage Control

Save As CSV

License Type 41

For the Cities of OAKLAND

Report as of: 09/24/2018

Rows Per Page:

Total Licenses: 326

Page 1 of 14

Click on column header to sort

	<u>License Number</u>	<u>Status</u>	<u>License Type</u>	<u>Orig. Iss. Date</u>	<u>Expir. Date</u>	<u>Primary Owner</u>	<u>Business Name</u>	<u>Premises Addr.</u>	<u>Geo Code</u>
1	180963	ACTIVE	41	12/30/1985	03/31/2019	ROCKRIDGE CAFE INC THE	ROCKRIDGE CAFE	5490-92 COLLEGE AVE OAKLAND, CA 94618 Census Tract: 4003.00	0109
2	197536	ACTIVE	41	04/20/1987	06/30/2019	FUNG, JING LING	BENS RESTAURANT	398 3RD ST OAKLAND, CA 94607 Census Tract: 9832.00	0109
3	202697	ACTIVE	41	11/18/1987	07/31/2019	ZACHARYS CHICAGO PIZZA INC	ZACHARYS CHICAGO PIZZA INC	5801 COLLEGE AVE OAKLAND, CA 94618 Census Tract: 4002.00	0109
4	239002	ACTIVE	41	11/22/1989	02/28/2019	ESPINOZA, NICOLAS	TIJUANA RESTAURANT	1308 INTERNATIONAL BLVD OAKLAND, CA 94606 Census Tract: 4059.02	0109
5	262355	ACTIVE	41	11/04/1991	05/31/2019	HAN, KYENAM	UZEN	5415 COLLEGE AVE OAKLAND, CA 94618 Census Tract: 4003.00	0109
6	264267	ACTIVE	41	09/19/1991	07/31/2019	HUNG, BRAND P C	SHAN DONG RESTAURANT	328 10TH ST, # 101 OAKLAND, CA 94607 Census Tract: 4030.00	0109
7	272978	ACTIVE	41	06/18/1992	08/31/2019	MOGALIAN, JEFFREY ARAM	BAJA TAQUERIA	4070 PIEDMONT AVE OAKLAND, CA 94611 Census Tract: 4041.02	0109
8	285356	ACTIVE	41	07/16/1993	06/30/2019	CATO CORP	CATOS ALE HOUSE	3891 PIEDMONT AVE OAKLAND, CA 94611 Census Tract: 4040.00	0109

9	<u>288520</u>	ACTIVE	41	10/28/1993	09/30/2018	TAQUERIA SAN JOSE INC		3433 INTERNATIONAL BLVD OAKLAND, CA 94601-3035 Census Tract: 4061.00	0109
10	<u>288794</u>	ACTIVE	41	03/21/1994	02/28/2019	GUM KUO RESTAURANT INC	GUM KUO RESTAURANT	388 9TH ST, STE 182 OAKLAND, CA 94607 Census Tract: 4030.00	0109
11	<u>303092</u>	ACTIVE	41	01/26/1995	12/31/2018	VASQUEZ, ANTONIO	JALISCO RESTAURANT	1721 INTERNATIONAL BLVD OAKLAND, CA 94606 Census Tract: 4060.00	0109
12	<u>303806</u>	ACTIVE	41	12/20/1994	01/31/2019	DOKHANCHY, MEHRDAD		3762 PIEDMONT AVE OAKLAND, CA 94611 Census Tract: 4040.00	0109
13	<u>312672</u>	ACTIVE	41	10/25/1995	09/30/2018	SERMSAKUL, SUTEERA	TAKE IT EASY	351 17TH ST OAKLAND, CA 94612 Census Tract: 4029.00	0109
14	<u>321261</u>	ACTIVE	41	12/16/1998	09/30/2018	SAWANWATANA, CHALADPAN	OLD WEANG PING VILLAGE RESTAURANT	6217 MACARTHUR BLVD OAKLAND, CA 94605 Census Tract: 4087.00	0109
15	<u>326009</u>	ACTIVE	41	02/06/1997	01/31/2019	CAMPOS, ADALBERTO	CUATRO CAMINOS RESTAURANT	3800 SAN LEANDRO ST OAKLAND, CA 94601 Census Tract: 4061.00	0109
16	<u>334289</u>	ACTIVE	41	09/29/1997	08/31/2019	OAKLAND HILLS TENNIS CLUB INC	OAKLAND HILLS TENNIS CLUB	5475 REDWOOD RD OAKLAND, CA 94619 Census Tract: 4080.00	0109
17	<u>334479</u>	ACTIVE	41	09/25/1997	08/31/2019	TEP, METHEA	DIGGERY INN	4212 PARK BLVD OAKLAND, CA 94602 Census Tract: 4049.00	0109
18	<u>334919</u>	ACTIVE	41	10/24/1997	09/30/2018	CACHIOTIS, ARTIE P	CONNIES CANTINA	3340 GRAND AVE OAKLAND, CA 94610 Census Tract: 4038.00	0109
19	<u>336347</u>	ACTIVE	41	12/02/1997	11/30/2018	CHANYONPATANAKUL, RATTANAPORN	SIAM BAY AUTHENTIC THAI CUISINE	1009 CLAY ST OAKLAND, CA 94607 Census Tract: 4031.00	0109

20	<u>337313</u>	ACTIVE	41	12/23/1997	06/30/2019	TAQUERIAS EL FAROLITO INC	TAQUERIA EL FAROLITO 4	3646 INTERNATIONAL BLVD OAKLAND, CA 94601 Census Tract: 4072.00	0109
21	<u>340934</u>	ACTIVE	41	05/11/1998	04/30/2019	LUONG, QUANG A	BECKY'S RESTAURANT	5620 COLLEGE AVE OAKLAND, CA 94618 Census Tract: 4003.00	0109
22	<u>341217</u>	ACTIVE	41	06/17/1998	05/31/2019	TRAN, HUE THI	BINH MINH QUAN VIETNAMESE RESTAURANT	338 12TH ST OAKLAND, CA 94607 Census Tract: 4030.00	0109
23	<u>341688</u>	ACTIVE	41	06/03/1998	05/31/2019	CHAE, SUSAN K	KORYO SUSHI	4390 TELEGRAPH AVE, STE G OAKLAND, CA 94609 Census Tract: 4011.00	0109
24	<u>351620</u>	ACTIVE	41	06/21/1999	01/31/2019	NGUYEN, TIMMY VAN	MISS SAIGON	3345 GRAND AVE OAKLAND, CA 94610 Census Tract: 4039.00	0109
25	<u>354600</u>	SUSPEN	41	07/20/1999	06/30/2019	ANTON, CARLOS ALBERTO	LA FURIA CHALACA	310 BROADWAY OAKLAND, CA 94607 Census Tract: 9832.00	0109


California Department of Alcoholic Beverage Control

License Type 47
For the Cities of OAKLAND
Report as of: 09/24/2018

 Rows Per Page:

Total Licenses: 205

Page 1 of 9

Click on column header to sort

	<u>License Number</u>	<u>Status</u>	<u>License Type</u>	<u>Orig. Iss. Date</u>	<u>Expir. Date</u>	<u>Primary Owner</u>	<u>Business Name</u>	<u>Premises Addr.</u>	<u>Geo Code</u>
1	45616	ACTIVE	47	11/01/1977	06/30/2019	GOMEZ, EFREN	MEXICALO ROSE RESTAURANT	701 CLAY ST OAKLAND, CA 94607 Census Tract: 4031.00	0109
2	121890	ACTIVE	47	04/20/1982	10/31/2018	ROSSI, GERALD FRANK	FAT LADY RESTAURANT THE	201 WASHINGTON ST OAKLAND, CA 94607 Census Tract: 9832.00	0109
3	159865	ACTIVE	47	11/13/1984	05/31/2019	SCOTTS JACK LONDON SEAFOOD INC	SCOTTS JACK LONDON SEAFOOD INC	73 JACK LONDON SQ OAKLAND, CA 94607 Census Tract: 9832.00	0109
4	180965	ACTIVE	47	10/04/1989	05/31/2019	YOHANNES, KESETE		5020 TELEGRAPH AVE OAKLAND, CA 94609 Census Tract: 4011.00	0109
5	218897	ACTIVE	47	10/06/1988	07/31/2019	HAM ODAY INC	GRAND OAKS RESTAURANT	3701 GRAND AVE OAKLAND, CA 94610 Census Tract: 4039.00	0109
6	258498	ACTIVE	47	03/12/1991	08/31/2019	BERGER, CHERYL	CLARION SUITES LAKE MERRITT HOTEL	1800 MADISON ST OAKLAND, CA 94612 Census Tract: 4034.00	0109
7	284182	ACTIVE	47	07/26/1993	06/30/2019	CARLSON, ALAN SCOTT		2220 MOUNTAIN BLVD, STE 100 OAKLAND, CA 94611 Census Tract: 4045.02	0109
8	287976	ACTIVE	47	09/21/1993	09/30/2018	MACIAS, JOSE MANUEL	LA ESTRELLITA CAFE	440-446 E 12TH ST OAKLAND, CA 94606 Census Tract: 4060.00	0109
9	289953	ACTIVE	47	12/29/1993	11/30/2018	LAMUMBA INC	GEOFFREYS INNER CIRCLE	410 14TH ST OAKLAND, CA 94612 Census Tract: 4029.00	0109

10	<u>327546</u>	ACTIVE	47	03/25/1997	02/28/2019	CATO CORP	BEN & NICKS BAR & GRILL	5612 COLLEGE AVE OAKLAND, CA 94618 Census Tract: 4003.00	0109
11	<u>327583</u>	ACTIVE	47	04/29/1997	06/30/2019	YOSHIS JAPANESE RESTAURANT INC	YOSHIS	510 EMBARCADERO W OAKLAND, CA 94607 Census Tract: 9832.00	0109
12	<u>331955</u>	ACTIVE	47	10/15/1997	09/30/2018	MONTCLAIR GOLF ENTERPRISES	MONTCLAIR GOLF CLUB	2477 MONTEREY BLVD OAKLAND, CA 94611 Census Tract: 4047.00	0109
13	<u>336135</u>	ACTIVE	47	01/13/1998	12/31/2018	SIGALIT INC	BUTTERCUP GRILL & BAR	1000 COTTON ST OAKLAND, CA 94606 Census Tract: 4060.00	0109
14	<u>343042</u>	ACTIVE	47	03/10/1999	03/31/2019	GALINDO, ENRIQUE	MI GRULLENSE	1457 FRUITVALE AVE OAKLAND, CA 94601-2320 Census Tract: 4062.02	0109
15	<u>345977</u>	ACTIVE	47	10/06/1998	08/31/2018	PELAYO, ABRAHAM	GUADALAJARA RESTAURANT	1001 FRUITVALE AVE OAKLAND, CA 94601 Census Tract: 4061.00	0109
16	<u>368265</u>	ACTIVE	47	12/07/2000	11/30/2018	COLLEGE AVENUE RESTAURANT INC	A COTE	5478 COLLEGE AVE OAKLAND, CA 94618 Census Tract: 4003.00	0109
17	<u>369757</u>	ACTIVE	47	03/13/2001	02/28/2019	EVERETT & JONES BARBEQUE JACK LONDON LLC	EVERETT & JONES BARBEQUE	126 BROADWAY OAKLAND, CA 94607 Census Tract: 9832.00	0109
18	<u>370364</u>	ACTIVE	47	02/05/2001	01/31/2019	PATTAJOTI, PARICHATI	SOI 4 RESTAURANT	5421 COLLEGE AVE OAKLAND, CA 94618 Census Tract: 4003.00	0109
19	<u>376061</u>	ACTIVE	47	06/21/2001	11/30/2018	CHRISTOPHER WARREN CORPORATION	MARICA SEAFOOD RESTAURANT	5301 COLLEGE AVE OAKLAND, CA 94618 Census Tract: 4003.00	0109
20	<u>384861</u>	ACTIVE	47	04/15/2002	03/31/2019	OLIVETO LINKS LLC	OLIVETO	5655 COLLEGE AVE OAKLAND, CA 94618 Census Tract: 4003.00	0109
21	<u>394743</u>	ACTIVE	47	01/07/2003	12/31/2018	FESEHA, IYASU	RED SEA RESTAURANT	5200-5204 CLAREMONT AVE OAKLAND, CA 94618 Census Tract: 4003.00	0109

22	<u>400401</u>	ACTIVE	47	07/18/2003	03/31/2019	ANTICA RESTAURANTS LLC	DOPO	4293 PIEDMONT AVE OAKLAND, CA 94611-4713 Census Tract: 4041.01	0109
23	<u>409515</u>	ACTIVE	47	10/05/2004	09/30/2018	LUKAS LLC	LUKAS TAPROOM & LOUNGE	2221 BROADWAY OAKLAND, CA 94612-3010 Census Tract: 4028.00	0109
24	<u>413495</u>	ACTIVE	47	10/21/2004	09/30/2018	DEDA ENTERPRISES INC	HOME OF CHICKEN & WAFFLES	444 EMBARCADERO W OAKLAND, CA 94607-3706 Census Tract: 9832.00	0109
25	<u>414721</u>	ACTIVE	47	01/03/2005	03/31/2019	KHO CORPORATION	OHGANE	3915 BROADWAY OAKLAND, CA 94611-5615 Census Tract: 4012.00	0109