

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 21.57
RELATING TO ALCOHOL NUISANCE ABATEMENT

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

WHEREAS, neighborhood character can change over time and the careful regulation of nuisance activity at liquor stores and other similar uses will help to ensure that such uses do not contribute to the deterioration of neighborhoods; and

WHEREAS, the citizens of the City of Long Beach have complained to the various City departments including the Police Department about said nuisances and criminal activities at liquor stores; and

WHEREAS, there are many liquor stores in the City of Long Beach selling alcoholic beverages that do not conform with the current zoning regulations and, as a result, these establishments generate a disproportionate amount of public nuisance calls for service for the Long Beach Police Department; and

WHEREAS, California law does not preempt local land use decisions with regard to liquor store regulations and the authority to regulate nuisance conditions created by such retailers derives solely from the City's general police powers; and

WHEREAS, the ability of local governments in California to regulate certain aspects of alcohol sales is limited by the California Constitution; and

WHEREAS, despite those limitations, many local agencies, including the City of Long Beach, have effectively used their constitutionally conferred police power to

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1 create land use tools, such a conditional use permits and administrative use permits to
2 regulate the ancillary aspects of alcoholic beverage sales without interfering with the
3 exclusive authority of the California Department of Alcoholic Beverage Control (ABC);
4 and

5 WHEREAS, a legal nonconforming or "grandfathered" liquor store that
6 retains the same type of liquor license type over time, continuously operates, and does
7 not substantially change its mode or character of operation, must be allowed to continue
8 its operation, even if local land use controls are subsequently adopted; and

9 WHEREAS, to address their inability to regulate grandfathered liquor store
10 establishments, several California cities have adopted so-called "deemed approved
11 ordinances"; and

12 WHEREAS, a deemed approved ordinance is a tool that allows a local
13 agency to exercise appropriate authority over grandfathered establishments through the
14 imposition of nuisance-based performance standards; and

15 WHEREAS, these performance standards focus on preventing nuisance
16 and criminal activity that may be associated with alcoholic beverage sales at liquor
17 stores; and

18 WHEREAS, certain grandfathered liquor store establishments in the City of
19 Long Beach have been the source of late-night incidents involving fights, loitering,
20 drinking in public and other nuisance activities which have generated a significant
21 demand on police resources; and

22 WHEREAS, under a deemed approved ordinance, the sale and service of
23 alcoholic beverages at grandfathered liquor stores is a deemed approved activity so long
24 as the liquor store complies with the general performance standards required of the
25 deemed approved status; and

26 WHEREAS, California courts have upheld both alcohol specific zoning
27 regulations and the deemed approved approach of imposing nuisance-based
28 performance standards on grandfathered establishments; and

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1 WHEREAS, given the limitations established by state law, deemed
2 approved ordinances are perhaps the most effective tool to address the impact of
3 nuisance and criminal activity that may be caused by alcoholic beverage establishments
4 such as liquor stores, especially when voluntary compliance and education prove
5 ineffective; and

6 WHEREAS, the City has considered numerous means of addressing such
7 issues and conducted outreach with stakeholders; and

8 WHEREAS, the City Council directed staff to move aggressively to prepare
9 a deemed approved ordinance and to make other relevant changes to allow the City to
10 more effectively regulate non-conforming liquor store establishments and to provide tools
11 that can be used to prevent and abate nuisance activities that may occur in such
12 establishments; and

13 WHEREAS, City staff have prepared an ordinance that has been carefully
14 drafted, under the City's police power, to be in compliance with constitutional and
15 statutory requirements and with existing case law so as to address Council's direction.

16
17 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
18 follows:

19 Section 1. The Long Beach Municipal Code is amended by adding
20 Chapter 21.57 to read as follows:

21 Chapter 21.57

22 Alcohol Nuisance Abatement

23 21.57.010

24 These provisions shall be known as the Alcohol Nuisance Abatement
25 "Deemed Approved" Ordinance.

26 21.57.020 Definitions.

27 "Liquor store" means any business selling general alcoholic
28 beverages, also known as sale of distilled spirits or hard liquor, for off-

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premises consumption under a "Type 21 License" of the California Department of Alcoholic Beverage Control. Liquor store does not include a business selling only beer and/or wine for off-premises consumption.

"Performance Standards" means the regulations prescribed below for liquor store activities with deemed approved status. An establishment must comply with the performance standards in order to retain its deemed approved status. Such compliance shall be determined by the City of Long Beach, and includes the following:

A. The activity does not result in any adverse effects, jeopardize, or endanger the health, peace, or safety of persons residing, visiting, or working in the surrounding area;

B. The activity is operated and maintained in accordance with all applicable local, state, or federal codes, laws, rules, regulations and statutes including those of the ABC, the City's General Plan, and all zoning, building or nuisance codes or regulations of the City.

C. The activity is operated and maintained in a neat, quiet, and orderly condition and operated in a manner so as not to be detrimental to surrounding properties and occupants. This shall encompass the upkeep and maintenance of exterior facades of the building, signage, landscaping, designated parking areas serving the activity, fences, and the perimeter of the site, including all public sidewalks, alleys, and parkways.

D. The activity does not result in repeated nuisance activities, as defined in Chapter 9.37 of this Code on or near the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, purchase or sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises especially in the late night or early

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1 morning hours, traffic violations, curfew violations, lewd conduct, or police
2 detentions and arrests;

3 E. The activity provides exterior lighting and security measures
4 to the satisfaction of the Chief of Police including:

5 1. Exterior lighting consisting of high-pressure sodium or
6 equivalent type, with a minimum illumination intensity of 1.25 foot-candle.
7 All exterior light fixtures shall be vandal resistant, installed on exterior walls,
8 and should be the type with proper cut-offs to avoid glare and night sky
9 glow. Exterior lighting shall clearly illuminate the building address, all
10 parking, driving, and walking surfaces, and exterior doors from dusk to
11 dawn. Activation of the required exterior lighting shall be either by a
12 photocell device or a time clock. Any broken or burned out lights shall be
13 required to be replaced within seventy-two (72) hours;

14 2. Security cameras providing full camera coverage of all
15 entries and exits into the building and full camera coverage of all public
16 rights-of-way and private parking areas provided by the business. Cameras
17 must record in color with output of at least four hundred eighty (480) lines
18 resolution. Recordings shall be retained for no less than thirty (30) days on
19 an IP-configurable Digital Video Recorder (DVR) or digital storage setup
20 with a public IP address. The surveillance system username and password
21 shall be provided to the Long Beach Police Department;

22 3. The City of Long Beach may require that a deemed
23 approved liquor store activity upgrade its lighting or security measures as
24 necessary as technology of such measures evolves.

25 F. No more than ten percent (10%) of the square footage of the
26 windows and transparent doors of the premises shall be allowed to bear
27 advertising, signs or any other obstructions including products, shelving,
28 display items and/or coolers. All advertising, signage, product, shelving,

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1 display items and/or coolers shall be placed and maintained to ensure a
2 clear and unobstructed view of the establishment's interior. Window signs
3 displaying prices shall be prohibited. No advertising or signage shall be
4 placed in the area above three (3) feet or below six (6) feet in height of all
5 windows measured from grade.

6 G. All existing publicly accessible exterior pay telephones shall
7 be removed, including the housing of the pay telephone. No new publicly
8 accessible exterior pay telephone may be located on any private property or
9 any public right-of-way adjacent to a deemed approved liquor store activity.

10 H. Any graffiti found on the walls, fences, pavement or buildings
11 shall be removed within twenty-four (24) hours of its appearance on the
12 property.

13 I. The building address shall be displayed on all sides of the
14 building facing a public right-of-way, including an alley, and clearly visible
15 from each public right-of-way, including the alley.

16 J. A copy of these performance standards, additional City or
17 ABC imposed operating conditions, and a twenty-four (24) hour complaint
18 telephone number shall be posted in a conspicuous and unobstructed place
19 visible from the entrance of the establishment in public view.

20 "Deemed Approved Liquor Store" means any commercial land use where
21 the sale of beer, wine, or distilled spirits was a legal nonconforming use prior to the
22 effective date of this Chapter.

23 For the purposes of this Chapter, the term "Nonconforming use" or
24 "Nonconformity" means a building which was lawfully established but which, due to
25 the application of this Title, no longer conforms to the regulations of the zone in
26 which it is located (See Section 21.15.1860).

27 21.57.030 Purpose.

28 The purpose of this ordinance is to protect and promote the public

1 health, safety, comfort, convenience and general welfare of the community
 2 by imposing anti-nuisance related performance standards on legal
 3 nonconforming liquor store activities with the incorporation of performance
 4 standards, the sale of alcohol becomes a conforming activity; however, all
 5 other nonconformities remain subject to the provisions of Chapter 21.27.

6
 7 21.57.040 Applicability.

8 This Alcohol Nuisance Abatement Deemed Approved Ordinance
 9 shall apply to all legal nonconforming liquor stores in the City of Long Beach
 10 on the effective date of this Chapter. The following establishments with a
 11 Type 21 ABC license are exempt from the ANAO: those with a current
 12 CUP, establishments that are located more than five hundred feet (500')
 13 from zoning districts allowing residential uses, and grocery stores of twenty
 14 thousand (20,000) square feet or greater with accessory sales of alcohol.

15 21.57.050 Automatic Deemed Approved.

16 A. All liquor stores that were legal nonconforming uses
 17 immediately prior to the effective date of this Chapter shall automatically be
 18 granted deemed approved status for the liquor store activity and shall no
 19 longer be considered legal nonconforming uses.

20 B. Each deemed approved liquor store activity shall retain its
 21 deemed approved activity status as long as it complies with the
 22 performance standards as defined in Section 21.57.020 of this Chapter.

23 C. Any expansion, alteration, or modification in character of the
 24 deemed approved liquor store shall conform to the City's Zoning Code
 25 including obtaining permits required under Chapter 21.25 of this Code.

26
 27 21.57.060 Performance Standards.

28 A liquor store activity shall retain is deemed approved status only if it

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1 conforms to all of the nuisance based performance standards defined in
2 21.57.020; such conformance shall be determined by the City of Long
3 Beach.

4 21.57.070 Administration and Enforcement.

5 A. Within ninety (90) days of the effectiveness of this Chapter,
6 each deemed approved liquor store activity shall fully comply with the
7 performance standards set forth in Section 21.57.020. In addition to any
8 remedy set forth in this Chapter, liquor store activities that do not fully
9 comply with the performance standards set forth in Section 21.57.020 within
10 ninety (90) days of the effective date of this Chapter, will be subject to the
11 administrative citation process in accordance to Chapter 9.65 of this Code.

12 B. Following initial compliance with the performance standards
13 set forth in Section 21.57.020, upon receiving a complaint from the public,
14 Police Department, Code Enforcement, or any interested person that a
15 deemed approved liquor store activity is in violation of the standards set
16 forth in Sections 21.57.020, the following procedure shall be followed:

17 1. The City shall assess the nature of the complaint and
18 its validity by conducting an investigation of the premises to assess the
19 liquor store activity's compliance with the applicable standards. The City
20 shall provide the business and/or property owner, as appropriate, with
21 written notice of any complaint received or investigation commenced by the
22 City relative to the liquor store activity's alleged failure to abide by the
23 regulations set forth in this Chapter.

24 2. Upon establishing the validity of a complaint, the City
25 shall issue a notice of violation to the business and/or property owner of the
26 subject deemed approved liquor store activity. The business and/or
27 property owner shall correct the violation, or take reasonable action to begin
28 correction, and shall diligently pursue completion of the correction within ten

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1 (10) days after receiving written notification of the violation. At the end of
2 the correction period, the City shall determine if the violation has been
3 corrected. If violations have not been corrected within the prescribed
4 period, the City shall then refer the matter to the Site Plan Review
5 Committee for further review and action.

6 3. The Site Plan Review Committee shall conduct a
7 hearing on the validity of the complaint. At the conclusion of the hearing,
8 the Site Plan Review Committee shall have the authority to add or modify
9 performance standards to insure that nuisance activity or conditions are
10 eliminated. Actions taken by the Site Plan Review Committee are
11 appealable by any aggrieved party to the Planning Commission. The
12 decision of the Planning Commission on appeal shall be final.

13
14 21.57.080 Revocation of Deemed Approved Status.

15 A. If a deemed approved liquor store activity continues to violate
16 the provisions of this Chapter after intervention by the Site Plan Review
17 Committee, the City may refer the matter to the Planning Commission for a
18 revocation hearing according to the procedures of Division VI,
19 "Revocations", of Chapter 21.21 of this Code.

20 1. Based on its findings and determination after hearing,
21 the Planning Commission may:

22 a. Continue the deemed approved activity status
23 for the liquor store in question;

24 b. Issue an administrative citation and impose
25 administrative penalties for violation of applicable standards in accordance
26 with Chapter 9.65 of this Code;

27 c. Impose such reasonable conditions as are in the
28 judgment of the Planning Commission necessary to ensure compliance with

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the applicable standards; or

d. Revoke the liquor store's deemed approved activity status.

2. If the Planning Commission determines to impose further, new conditions on the deemed approved liquor store activity, such conditions shall be based upon the information then before the Planning Commission.

3. If the Planning Commission finds that conditions and/or modifications of the liquor store will be ineffective in eliminating the adverse activities, the Planning Commission shall revoke the deemed approved activity status of the liquor store.

4. Continuation of any use after abandonment or revocation pursuant to this Chapter shall constitute a violation of this Code and shall be penalized as provided for in Section 21.10.080.

5. Any aggrieved party may appeal the determination of the Planning Commission to the City Council in accordance with the provisions set forth in Division V, "Appeals", of Title 21 of this Code. The decision of the City Council on appeal shall be final.

21.57.090 Fee.

A. The administrative citation process described in this Chapter does not preclude the City from recovering any other code violation or nuisance abatement costs incurred by the City in performing its code enforcement efforts.

B. The City may collect a fee to recover costs associated with the inspection and enforcement of this Chapter in accordance with the City Council adopted fee resolution.

1 Section 2. Environmental Determination. The project is exempt from
 2 environmental review per CEQA Guidelines under Section 15061(b)(3) which states "that
 3 if an activity is covered by the general rule that CEQA applies only to projects which have
 4 the potential for causing a significant effect on the environment and where it can be seen
 5 with certainty that there is no possibility that the activity in question may have a significant
 6 effect on the environment, the activity is not subject to CEQA".

7 Section 3. The City Clerk shall certify to the passage of this ordinance by
 8 the City Council and cause it to be posted in three (3) conspicuous places in the City of
 9 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
 10 Mayor.

11
 12 I hereby certify that the foregoing ordinance was adopted by the City
 13 Council of the City of Long Beach at its meeting of _____, 2013, by the
 14 following vote:

15
 16 Ayes: Councilmembers: _____

17 _____

18 _____

19 _____

20 Noes: Councilmembers: _____

21 _____

22 Absent: Councilmembers: _____

23 _____

24
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 26 _____

City Clerk

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Approved: _____
(Date)

Mayor

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