

ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITIES

(DEEMED APPROVED ORDINANCE)



**Department Of
Conservation And Development
Community Development Division**

General Information – Help Desk

925-674-7200

30 Muir Road
Martinez, CA 94553

Hours

7:30AM – 5:00PM M-Th

7:30-4:00PM Fridays

Ordinance Effective November 22, 2002

This guide is intended to provide an overview of the Alcoholic Beverage Sales Commercial Activities (Deemed Approved) Ordinance. Readers should be cautioned that the information is a summary of relevant portions of the ordinance.

The entire Ordinance is available on the Web at:

<http://www.contracosta.ca.gov/DocumentCenter/View/2209>

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The Deemed Approved Ordinance

This ordinance was created to protect and promote the public health, safety, and general welfare of the residents of the County and to prevent nuisance activities where alcohol beverage sales occur, including both on-sale (ex. Bars, clubs, lounges) and off-sale (ex. liquor store, packaged takeout of alcohol products) premises.

This ordinance requires a land use permit be obtained for new commercial alcohol beverage sales, confers Deemed Approved Status for existing commercial alcohol beverage sales, and provides standards and a process to review violations of those standards.

This Ordinance alone does not allow or permit alcohol beverage sales, but only applies to activities that are otherwise allowed or permitted within an involved applicable land use zoning district.

Ordinance Purpose

The goals are to protect residential, commercial, industrial, and civic areas, to minimize the adverse impacts of nonconforming and in-compatible alcohol uses, and to provide opportunities for Alcohol Beverage Sale Activities to operate in a mutually beneficial relationship to each other and to other commercial and civic services. The ordinance provides mechanisms to address problems often associated with the public consumption of alcohol beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels.

What is Deemed Approved Status?

Any premises for which an Alcohol Beverage Control (ABC) state liquor license was issued before November 22, 2002 is entitled to Deemed Approved Status. The business retains its Deemed Approved Status. The business retains its Deemed Approved Status if it complies with the Deemed Approved

CONTRA COSTA COUNTY
DEEMED APPROVED ALCOHOLIC BEVERAGE SALES
PERFORMANCE STANDARDS

This business has been designated as a Deemed Approved Alcoholic Beverage Sales Commercial Activity and is required to comply with all of the following performance standards:

- Its operation does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
- Its operation does not result in repeated nuisance activities 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, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct or police detentions and arrests;
- Its operation does not result in violations of other county, state, or federal regulations, ordinances, or statutes;
- Its operation does not result in the transfer, expiration or revocation of a State of California Department of Alcoholic Beverage Control license;
- Its upkeep and operating characteristics are compatible with and will not adversely affect the livability or orderly development nor encourage the marginal development of abutting properties and the surrounding neighborhood; and
- Its operation does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area.

COMPLAINT PROCEDURE

Call the Contra Costa County Code Enforcement Division at 877-646-8314 if you wish to file a complaint that this site may be in violation of the performance standards.

What if I Transfer an Alcoholic Beverage Control License?

To a new owner:

If a new license is to be transferred to a new owner, the Community Development Division may request that the State of California Department of Alcoholic Beverage Control (ABC) impose conditions to mitigate problems at or in the immediate vicinity of the premises.

To a new location:

If a license is to be transferred to a new location, or the license is revoked, the Alcohol Beverage Sales Activity must apply for a land use permit (see page 10).

What if there are Changes to my Existing License or Premises?

A Land Use Permit may be required if any of the following occurs to the Alcohol Beverage Sales Commercial Activity:

The operation(s):

1. Discontinues for more than 120 days;
2. Surrenders, abandons, closes or quits its licensed premises;
3. ABC license is surrendered or suspended;
4. Changes its activity so that ABC requires a different type of license;
5. Expands the floor area devoted to the display or sales of alcohol beverages, or both, by more than 20 percent; or
6. Any other circumstance that results in a substantial change in the mode or character of operation of the Alcohol Beverage Sales Commercial Activity.

erated without substantial change in the mode or character of operation. At the conclusion of the hearing, the Zoning Administrator may determine that a substantial change in the mode or character of operation of the premises either has occurred or has not occurred.

If the Zoning Administrator determines that a substantial change in the mode or character of operation of the premises has occurred, the Alcohol Beverage Sales Commercial Activity must cease operation and may not resume unless it applies for and obtains a land use permit. The determination of the Zoning Administrator becomes final 30 calendar days after the date of decision unless appealed to the Board of Supervisors.

Restaurants

A Full-Service Restaurant is a restaurant which obtains a minimum of 67 percent of its gross receipts from the sale of meals and other food and drink non-alcohol products. It is primarily, regularly and in a bona fide manner used and kept open for the serving of at least dinner to guests for compensation, and has kitchen facilities containing conveniences for cooking an assortment of foods that may be required for those meals.

A Full-Service Restaurant is exempt from this ordinance. To apply for this exemption, you will need to submit the restaurant exemption form to the Contra Costa County Community Development Division. You may also be asked to submit evidence of total meal and other non-alcohol product sales to County officials upon request for purposes of determining its status under this ordinance.

The Full-Service Restaurant is not based on the ABC license type. Even if you have an ABC Type 41: On-sale Beer and Wine, Eating Place, Restaurant; or an ABC Type 47: On-sale General, Eating Place, Restaurant, you are required to submit the Restaurant Exemption form to the County to claim exempt



CONTRA COSTA COUNTY
 DEPARTMENT OF CONSERVATION AND DEVELOPMENT
 COMMUNITY DEVELOPMENT DIVISION
 30 Muir Road, Martinez, CA 94553
 Telephone: (925) 674-7200 Fax: (925) 674-7244

Alcohol Beverages Commercial Sales Activities (Deemed Approved Ordinance)

RESTAURANT EXEMPTION

Full-service restaurants that obtain a minimum of 67 percent of gross receipts from the sale of meals, food and non-alcohol drink products, and submit evidence of total meal and other non-alcohol product sales, are exempt from the Alcohol Beverages Commercial Sales Activities (Deemed Approved Ordinance), and the associated annual \$400 fee. An establishment that sells or serves only sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or only snack foods, or both, is not a full-service restaurant. The restaurant must have an ABC alcohol license type 41 or 47 to qualify for an exemption.

If your full-service restaurant meets the above criteria for exemption, please complete this form, NOTARIZE, and mail it to the above address no later than _____.

BUSINESS OWNER(S) NAME _____
NAME OF BUSINESS _____
BUSINESS ADDRESS _____
PHONE NUMBER _____
RESTAURANT ASSESSOR PARCEL NUMBER _____
BUSINESS LICENSE NUMBER _____
ABC LICENSE NUMBER _____
ABC LICENSE TYPE(S) _____
PROPERTY OWNER'S NAME _____

I (we) hereby verify that the restaurant listed above is a full-service restaurant that obtains a minimum of 67 percent of gross receipts from the sale of meals and other food and non-alcohol drink products. I (we) further understand that when requested by the County, we will submit evidence to verify that I (we) meet the exemption requirement.

Business Owner _____	Signature _____	Date _____
Business Owner _____	Signature _____	Date _____

(ATTACH NOTARY)

G:\Current Planning\ALCOHOL ORDINANCE\restaurant exemption form2.doc

Violations of Performance Standards

If the County receives a complaint that an existing establishment with Deemed Approved Status is not complying with the Performance Standards, the County Code Enforcement Division will review the complaint. If the complaint is validated, they will refer the matter to the Community Development Division where the matter will be set for public hearing to receive testimony regarding the site to determine whether the establishment is operating in conformance with the Deemed Approved Performance Standards. At the conclusion of the hearing, the Zoning Administrator may continue the Deemed Approved Status for the activity in question or may require changes or impose reasonable Conditions of Approval to retain Deemed Approved Status. The decision will be based on information in staff documents and testimony from the business owner and all other interested parties. The Deemed Approved Activity must comply with these conditions.

Within 30 calendar days after a decision by the Zoning Administrator, the business owner or property owner if not the same, the Sheriff, community members, or any other interested party may appeal the decision to the Board of Supervisors (refer to Public Hearing Process).

In considering an appeal, the Board of Supervisors must determine whether the established use conforms to the applicable Deemed Approved Performance Standards or Conditions of Approval. The Board of Supervisors may continue or revoke a Deemed Approved Status, or the Board of Supervisors may modify the Conditions of Approval as the Board judges necessary to ensure conformity with Deemed Approved Performance Standards.

What is Required to Establish a New Alcohol Beverage Sales Commercial Activity?

A land use permit must first be applied for and obtained. A new Alcohol Beverage Sales Commercial Activity is not permitted:

- Within 700 feet of an existing Alcohol Beverage Sales Commercial Activity. This distance does not apply to any new Alcohol Beverage sales Commercial Activity that has 25 or more full time equivalent (FTE) employees and a total floor area of 20,000 square feet or more, and sells from the premises food and other groceries for home consumption.
- Within 400 feet of any of the following: a public or private accredited school; a public park, playground or recreational area; a place of worship; a hospital; an alcohol or other drug abuse recovery or treatment facility; or a County social service office.
- Within a Crime Reporting District, or within 600 feet of a Crime Reporting District, the general crime rate exceeds the countywide general crime rate by more than 20 percent.

The above distances will not be measured from any establishment that is not generally open to the public, including private clubs and lodges.

Land Use Permits

An application for a land use permit is an application to establish a use within a land use district which does not allow establishment by right, but does allow its establishment after the granting of a land use permit. A public hearing is held on land use permit applications.

The application for a Land Use Permit may be obtained from the Community Development Department at the Application and Permit Center, or the County Website. Refer to the “Who to Contact” section at the back of the booklet.

A land use permit to allow a new Alcohol Beverage Sales Commercial Activity will be issued only if the following findings are made:

1. That a finding of “public convenience and necessity” (Bus. & Prof. Code § 23958.4(b)(2)), if the activity will be located in an area that has been determined by the State of California Department of Alcohol Beverage Control to have an undue concentration of licenses;
2. That the Alcohol Beverage Sales Commercial Activity will not aggravate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcohol beverage sales to minors, noise and littering;
3. That the proposed conditional land use shall not be detrimental to the health, safety and general welfare of the county;
4. That it shall not adversely affect the orderly development of property within the county;
5. That it shall not adversely affect the preservation of property values and the protection of the tax base within the county;
6. That it shall not adversely affect the policy and goals as set by the general plan;
7. That it shall not create a nuisance and/or enforcement problem within the neighborhood or community;

Conditions

Reasonable conditions of approval may be imposed as part of any land use permit approval. Conditions may be included as part of the land use permit covering issues such as, but not limited to, security measures, lighting, litter, trash receptacles, graffiti or nuisance abatement, or other similar requirements; separation, monitoring, or design of areas devoted to alcohol sales; limiting or prohibiting entertainment uses, activities, or amusement devices on the premises, maintenance, hours, and signage.

The length of time it takes to obtain a land use permit varies based on the complexity of the application. Call the Community Development Department regarding current time frames. The process may take 3 to 5 months. Once your application is filed, you should contact the planner assigned to obtain information regarding the timing of your application review.

Appeal Procedures

Any decision made by the Zoning Administrator or the Planning Commission may be appealed. An appeal is a written submittal made to the Community Development Department asserting that code requirements were not satisfied by the evidence presented at the hearing, the conditions imposed were unreasonable, or conditions recommended during the hearing process should have been imposed but were not.

Appeal procedures vary depending on the decision which is appealed. To ensure you obtain the correct information, please contact the assigned project planner.

An appeal must be made within the required timeframe (10 or 30 days, refer to page 13) by filing a written notice, clearly specifying the grounds for the appeal, along with a \$125.00 appeal fee. If the 10th or 30th day falls on a holiday, Saturday or Sunday, the next working day will be treated as the final day of the appeal period.

Appeal Timing

- I. Deemed Approved Alcohol Establishment: Violations to Performance Standards, or a Decision that Land Use Permit is required:

Zoning Administrator Decision

Appealed within 30 days to

Board of Supervisors

- II. Land Use Permit and Modifications to a Land Use Permit:

Zoning Administrator Decision

Appealed within 10 days to

County Planning Commission

Appealed within 10 days to

Board of Supervisors

Notification of Public Hearing

Community Development will notify both the owner of the Alcohol Beverage Sales Commercial Activity and the property owner (if not the same) of the date, time and place of the public hearing. Notice will also be sent to all persons owning real property within 300 feet of the subject property. All notices will be mailed at least ten days before the hearing date. Notification fees will be paid for by the owner of the Deemed Approved Activity.

Inspection and Right of Entry

County staff designated by the County Administrator to enforce this ordinance may enter an Alcohol Beverage Sales Commercial Activity during normal business hours whenever they have cause to suspect a violation of any provision of this chapter or to investigate alleged violations of the Deemed Approved Performance Standards or Conditions of Approval. An owner or occupant, or agent of an owner or occupant, who refuses to permit entry and investigation

Terms to Know

For the purposes of this ordinance, the following words and phrases have the following meanings:

“Alcohol Beverage” Alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, that meets the following criteria: (1) contains one-half of one percent or more of alcohol by volume; (2) is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances; and (3) sales of which require a State of California Department of Alcohol Beverage Control License.

“Alcohol Beverage Sales Commercial Activity” The retail sale for on-premises or off-premises consumption of Alcohol Beverages. A Full-Service Restaurant is not an Alcohol Beverage Sales Commercial Activity.

“Condition of Approval” A requirement that must be carried out by: (1) a new Alcohol Beverage Sales Commercial Activity or (2) an existing Alcohol Beverage Sales Commercial Activity to comply with Deemed Approved Performance Standards and to retain its Deemed Approved Status.

“Crime Reporting Districts” Geographical areas within the boundaries of the unincorporated area of the County that are identified by the Contra Costa County Sheriff’s Department in the compilation and maintenance of statistical information on reported crimes and arrests.

“Deemed Approved Activity” Any Alcohol Beverage Sales Commercial Activity existing before November 22, 2002 (the effective date of this ordinance) is a Deemed Approved Activity if it complies with the Deemed Approved Performance Standards.

“Full-Service Restaurant” A place that: (1) is primarily, regularly and in a bona fide manner used and kept open for the serving of at least dinner to guests for compensation; (2) has

kitchen facilities containing conveniences for cooking an assortment of foods that may be required for those meals; (3) obtains a minimum of 67 percent of its gross receipts from the sale of meals and other food and drink non-alcoholic products; and (4) submits evidence of total meal and other non-alcohol product sales to county officials upon request for purposes of determining its status under this ordinance. A place that sells or serves only sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or only snack foods, or both, is not a Full-Service Restaurant.

“License” A valid State of California Department of Alcohol Beverage Control license.

“Off-Sale Alcohol Outlet” An establishment that conducts retail sales of Alcohol Beverages for consumption off the premises where sold.

“On-Sale Alcohol Outlet” An establishment that conducts retail sales of Alcohol Beverages for consumption on the premises where sold, excluding Full-Service Restaurants.

“Zoning Administrator” The designated individual who conducts public hearings to consider land use permit applications and violations of the Performance Standards for Alcohol Beverage Sales Commercial Activities.

Common ABC License Types:

(refer to ABC’s website for further information”

ABC Type 20 License: 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.

ABC Type 21 License: 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.

ABC Type 40 License: 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.

ABC Type 41 License: 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 make actual and substantial sales of meals during the normal meal hours that they are open, at least five days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m. - 2:00 p.m., and 6:00 p.m. - 9:00 p.m. Premises that are not open five days a week must serve meals on the days they are open. Minors are allowed on the premises.

ABC Type 47 License: On-sale General - EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licensed premises. Authorizes the sale of beer and wine for consumption off the licensed premises. Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals during the normal meal hours that they are open, at least five days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m. - 2:00 p.m., and 6:00 p.m. - 9:00 p.m. Premises that are not open five days a week must serve meals on the days they are open. Minors are allowed on the premises.

ABC Type 48 License: On-sale general - Public Premises - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are not allowed to enter and remain. Food service is not required.

FEES FOR ALCOHOL BEVERAGE SALES COMMERCIAL ACTIVITIES

DESCRIPTION	FEE	COMMENT
Liquor License Site Determination	\$525.00	Finding of Public Convenience & Necessity
Deemed Approved Annual Fee	\$400.00 Annually per ABC License	Full Service Restaurants Are Exempt
Land Use Permit	\$2,700 Deposit + Time and Materials	Public Hearing For Violations to Per- formance Standards,
Appeal - Land Use Permit	\$125 Filing Fee Time and Materials	Appeal of Zoning Administrator or Planning Commission
Conditions of Approval Compliance Check	\$1,000 Deposit Time and Materials Charged To Applicant	Review of Compliance with Conditions Of Approval

Violations and Penalties

- (a) Violations of the performance standards, terms or any of the Conditions of Approval or a land use permit issued under this article may result in revocation of the permit, as well as any other enforcement remedy allowed by law.
- (b) If the Deemed Approved Status of a Deemed Approved Activity is revoked, the property owner or business owner is subject to:
 - (1) criminal enforcement action, including arrest by citation;
 - (2) civil enforcement; and
 - (3) in the case of a property owner, nuisance abatement
- (c) Liability Expenses. In addition to the punishment provided by law, a violator is liable for costs, expenses, and disbursements paid or incurred by the County or any of its contractors in the correction and abatement of the violation. Re-inspection fees to ascertain compliance with previously noticed or cited violations may be charged against the owner of the Deemed Approved Activity. The County will mail the property owner or business owner of the affected premises a written notice setting forth the itemized cost of chargeable services and requesting payment of those costs. If the bill is not paid in the time stated in the notice, the charges will be referred to the County Office of Revenue Collection, or the charges will be placed as a lien against the property.

WHO TO CALL

Community Development Division

For questions regarding the Alcohol Ordinance, contact:

Gary Kupp

e-mail: Gary.Kupp@dcd.cccounty.us

(925) 674-7799—Direct

(925) 674-7205—Secretary

(925) 674-7200—Help Desk

(925) 674-7258—Fax

30 Muir Road

Martinez, CA 94553

Code Enforcement

*For Alcohol Ordinance Violations or Alcohol-Related Complaints,
contact:*

(925) 674-7210—Code Enforcement

(925) 674-7200—Help Desk

(925) 674-7250—Fax

30 Muir Road

Martinez, CA 94553

To see the entire Ordinance on the Web, go to:

<http://www.contracosta.ca.gov/DocumentCenter/View/2209>

The Department of Alcoholic Beverage Control Website

**CONTRA COSTA COUNTY
DEPARTMENT OF
CONSERVATION AND DEVELOPMENT**

COMMUNITY DEVELOPMENT DIVISION