



## STAFF REPORT

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**MEETING DATE:** January 11, 2023

**PRESENTER:** Jesus R. Orozco, Community Development Director

**SUBJECT:** Ordinance Text Amendment to Amend Ordinance Sections 17.46.030, 17.48.030, 17.50.030, 17.90.020 of Title 17 of the Kerman Municipal Code and Adding Chapter 17.100 to Title 17 of the Kerman Municipal Code Relating to Alcohol Beverage Sales (JRO)

**RECOMMENDATION:** City Council conduct a public hearing, waive full reading, and introduce an Ordinance Text Amendment amending Ordinance Sections 17.46.030, 17.48.030, 17.50.030, 17.90.020 of Title 17 of the Kerman Municipal Code and adding Chapter 17.100 to Title 17 of the Kerman Municipal Code related to Alcohol Beverage Sales.

**EXECUTIVE SUMMARY:**

The Kerman Municipal Code has a limited number of alcohol beverage sales uses (ABC uses) that are subject to the conditional use permit (CUP) process. Currently, “bars, liquor stores, and taverns” are the only ABC uses within the commercial zone district’s use schedules subject to a CUP. ABC uses not subject to a CUP include; grocery stores, supermarkets, mixed-retail pharmacies, restaurants, convenience stores, and service stations among others. As a result, many alcohol-related businesses throughout the years have been approved as “by-right” uses as shown in Attachment C. The by-right approval the ordinance currently grants some ABC uses has prevented the City from discretionary review and consideration as well as limited its enforcement authority.

Furthermore, City Council (Council) has expressed concern about the lack of criteria and objective review process for ABC uses which has resulted in the oversaturation of ABC sales in a number of City census tracts. After a preliminary work study with the Council, staff has conducted the necessary research and prepared a draft ordinance to address the various shortcoming within the ordinance as expressed by the Council. The attached proposed ordinance will require that alcohol-based uses be reviewed and considered via the CUP process. The proposed ordinance also includes a new chapter within Title 17 specific to the objective review and operating standards when considering new CUP applications for ABC sales.

**DISCUSSION:**

The Kerman Municipal Code has a limited number of alcohol beverage sales uses (ABC uses) uses that are subject to the CUP process. Currently, “bars, liquor stores, and taverns” are the only ABC uses within the General Commercial (CG) zone district’s use schedule subject to a CUP. ABC uses not subject to a CUP include; grocery stores, supermarkets, mixed-retail pharmacies, restaurants, convenience stores, and service stations among others. Many of the ABC uses were either established prior to the 1991 zoning ordinance being updated or were approved as “by-right” uses per the current zoning ordinance’s use schedule. The by-right approval of many of the ABC uses, as seen in Attachment ‘C’, has resulted in an oversaturation of ABC sales without City discretionary review and limited enforcement authority.

The Council has expressed concern about the lack of objective criteria and discretionary review of ABC uses as a result of recent requests for Public convenience or Necessity (PCN) as part of establishing alcohol sales. The proposed ordinance text amendments aim to address the Council's concerns as well as three key points that ensure appropriate review and implementation of CUPs for ABC uses.

First, the proposed ordinance identifies the three commercial (General, Neighborhood, and Service) zone districts wherein alcohol sales commonly occur. Currently, the General Commercial zone district identifies "bars, liquor stores, and taverns" as permitted use via a CUP. The Neighborhood Commercial zone district identifies "liquor store" as permitted use via a CUP. The Service Commercial zone districts do not have a provision that allows for ABC sales. The proposed ordinance will ensure future ABC sales are permissible via CUP in the three stated commercial zone districts.

Secondly, the proposed ordinance clarifies terms and definitions by repealing antiquated terms, amending existing terms, and defining new terms. In particular the term "alcohol beverage sales" has been defined to encompass all business uses that sell or dispense alcohol for either on- or off-sale. The addition of this term is paramount as it includes all current types of businesses that sell or may sell alcohol as part of the business model.

Lastly, the proposed ordinance establishes a new chapter within Title 17 designed to implement an objective review process for new ABC uses and sets operating standards for all ABC uses. This being, new ABC sales will be considered on a case-by-case basis with relation to surrounding land uses, proximity to existing ABC uses and sensitive land uses e.g. schools, daycares, and churches.

Below is a description of the section amendments as follows:

Section 17.46.030 relates to conditional uses within the Neighborhood Commercial zone district. Amendments in this section entail repealing the term "liquor store" as a conditional use and adding the term "Alcohol Beverage Sales" as a conditional use. Adding the term will ensure all alcohol sales-based uses are subject to a CUP and not just liquor stores.

Section 17.48.030 relates to conditional uses within the General Commercial zone district. Amendments in this section entail repealing the term "bar, liquor store, and tavern" as conditional uses and adding the terms "Alcohol Beverage Sales," "Automobile Service Station," and "Drive-Through Facility" as conditional uses. The term "Outdoor sales and storage" is further amended to include "dining". Adding the term "alcohol beverage sales" will ensure all alcohol sales-based uses are subject to a CUP and not just bars, liquor stores, and taverns. Additionally, the terms automobile service station and drive-through facility are being added as conditional uses because said uses have been modernized to be part of a larger business model that includes alcohol sales. As an example, an automobile service stations are often developed with a convenience store with a drive-through facility which may include ABC sales, generally for off-site consumption. The term outdoor sales, dining, and storage has been amended to encompass uses such as restaurants or eateries that may serve alcohol for on-site consumption.

Section 17.50.030 relates to conditional uses within the Service Commercial zone district. Amendments in this section entail the addition of the term "Alcohol Beverage Sales" as a conditional use. Adding the term will ensure all alcohol sales-based uses within the zone district are subject to a CUP.

Section 17.90.020 relates to the definitions of the Kerman Municipal Code. Amendments in this section entail repealing the definitions for "bar, liquor store, and tavern," "off-sale liquor," and "on-

sale liquor”. Subsequently the term “alcohol use” is further amended to “alcohol beverage sales” to encompass all previously stated terms related to alcohol sales. The new term “alcohol beverage sales” will read as follows: any retail activity which includes the sale or dispensing of alcoholic beverages for consideration of on-sale liquor or off-sale liquor. Alcoholic beverages shall be defined as those beverages requiring licensing for sale by the California State Department of Alcoholic Beverage Control (hereinafter referred to as an "ABC License").

Title 17 of the Kerman Municipal Code has been amended to include a new chapter, Chapter 17.100 relating to Alcohol Beverage Sales Uses. This chapter establishes standards for all retail activity which includes the sale or dispensing of alcoholic beverages for on-sale liquor or off-sale liquor. Having codified standards will assist the City in preventing new ABC sales that may possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when alcoholic beverage sales are concentrated near one another. Chapter 17.100 addresses existing ABC uses which have been established without a CUP and new ABC uses that may apply to establish within the City. This chapter also stipulates operating standards for all ABC uses including signage, security, and surveillance requirements. Furthermore, new on- and off- ABC sales applications will be evaluated and considered with relation to their proximity to existing ABC sales and sensitive land uses e.g. schools, daycare facilities, and churches. It is noteworthy that the proposed ordinance will require new off-sale ABC sales applications to be transferred ABC licenses from within Fresno County boundaries. This specific requirement is a responsible attempt to slow down the oversaturation of off-sale alcohol sales within the City.

A full version of the ordinance text amendment has been included as Attachment ‘A’. Additionally, the City of Kerman Planning Commission held a public hearing on December 12, 2022, to consider amending Sections 17.46.030, 17.48.030, 17.50.030, 17.90.020 of Title 17 of the Kerman Municipal Code and adding Chapter 17.100 to Title 17. The Commission unanimously voted on a resolution recommending to the City Council that the Council adopt the ordinance text amendment, as presented in Attachment ‘B’.

**FISCAL IMPACT:**

None

**ENVIRONMENTAL REVIEW:**

The adoption of this ordinance is exempt from further CEQA review under the common sense rule Section 15061(b)(3)) because there is no possibility that this project may have a significant, adverse, impact on the environment. This is because this project involves purely procedural policies with no impacts on the environment. Therefore, this project is not subject to CEQA.

**ATTACHMENTS:**

- A. Ordinance
- B. Planning Commission Resolution w/Exhibits
- C. Active ABC License Holders