

Attachment 'B'

Resolution 2022-08

A RESOLUTION OF THE CITY OF KERMAN PLANNING COMMISSION RECOMMENDING TO CITY COUNCIL ADOPTION OF A ZONING ORDINANCE TEXT AMENDMENT TO 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

WHEREAS, in accordance with Section 17.26.020 subsection C of the Zoning Ordinance, the City Planner filed a written action initiating Zoning Ordinance Text Amendment No. 2022-02; and

WHEREAS, the Planning Commission has conducted a public hearing duly noticed on November 30, 2022; and

WHEREAS, the Planning Commission reviewed all the evidence, staff report analysis, and associated revisions and determined that the proposed zoning ordinance text amendment will not be detrimental to the public health, safety, and welfare of the persons residing or working in the City of Kerman; and

WHEREAS, the proposed zoning ordinance text amendment is consistent and compatible with the goals, policies, and implementation programs set forth in the General Plan; and

WHEREAS, the proposed zoning ordinance text amendment is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.), pursuant to Section 15061(b)(3) known as the common sense rule because there is no possibility that this project may have a significant, adverse, impact on the environment. This is because the project involves purely procedural policies with no impacts on the environment; and

WHEREAS, The Planning Commission now desires recommending to the City Council to amend 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.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED based upon the evidence in the staff report, public testimony, and project file, the Planning Commission recommends the City Council recognizes the appropriateness of Zoning Ordinance Text Amendment 2022-02, 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 based on the following findings:

SECTION 1. The foregoing recitals are true and correct and incorporated by reference.

SECTION 2. Based upon the evidence in the staff report, public testimony, and project file, and as required by Kerman Municipal Code Section 17.26.040, the Planning Commission makes the following findings:

A. That the proposed zoning ordinance text amendment will not be detrimental to the public health, safety, and welfare of the persons residing or working in the City of Kerman; and

B. That the proposed zoning ordinance text amendment is consistent and compatible with the goals, policies, and implementation programs set forth in the General Plan; and

C. That the proposed zoning ordinance text amendment is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.), pursuant to Section 15061(b)(3) known as the common sense rule because there is no possibility that this project may have a significant, adverse, impact on the environment.

SECTION 3. Based on the foregoing the Planning Commission recommends that the City Council approve the proposed zoning ordinance text amendment to 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 which is attached as Exhibit A to this Resolution.

The foregoing Resolution was adopted at a regular meeting of the City of Kerman Planning Commission held on December 12, 2022, by the following vote:

AYES:


NOES:

ABSTAIN:

ABSENT:

The foregoing resolution is approved.

Attest:


Jesus R. Orozco
Planning Commission Secretary

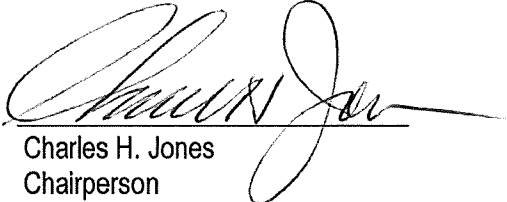

Charles H. Jones
Chairperson

Exhibit 'A'

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KERMAN 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 OF THE KERMAN MUNICIPAL CODE RELATING TO ALCOHOL BEVERAGE SALES

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

SECTION 1. Section 17.46.030 of the Kerman Municipal Code is amended to repeal the term "liquor store" as a conditional use and to add the term "Alcohol Beverage Sales" as follows:

17.46.030 Conditional Uses.

Conditional uses in this district are as follows:

Alcohol Beverage Sales

Banks;

Convenience stores;

Duplicating shop;

Eating places, including cafes and restaurants;

Fire station;

Gasoline station;

Hardware store and garden supply (less than five thousand square feet)

Medical, professional, and administrative offices;

Post office;

Self-car wash.

SECTION 2. Section 17.48.030 of the Kerman Municipal Code is amended to repeal the term "bar, liquor store, and tavern" as conditional uses; to add the terms "Alcohol Beverage Sales," "Automobile Service Station," and "Drive-Through Facility"; and to amend the term "Outdoor sales and storage" to include "dining" as follows:

17.48.030 Conditional Uses.

Conditional uses in this district are as follows:

Alcohol Beverage Sales;

Auto lease and rental;

Automobile, motorcycle, and small engine repair;

Automobile Service Station

Auto sales, new and used;

Boarding or rooming facilities;

Bowling alleys;

Bus depots;

Cabinet shops;

Card rooms;

Carwash;

Churches;

Drive-Through Facility

Equipment sales and rental;

Feed and seed store;

Friction shop;

Furniture upholstery shops;

Glass, radiator, tire and muffler shops;

Hotel and motel;

Hospital;

Library;

Massage establishments as defined in Section 9.27.030;

Multiple-family residential dwellings (R-2 and R-3 district);

Outdoor sales, dining, and storage;

Second-hand store;

Sign shops;

Theater and auditorium;

Utility yards;

Veterinary offices with enclosed boarding structure;

A residential dwelling associated with a business listed above.

SECTION 3. Section 17.50 of the Kerman Municipal Code is amended to add the term “Alcohol Beverage Sales” to conditional uses as follows:

17.50.030 Conditional uses.

Conditional uses in this district are as follows:

All uses permitted in the General Commercial district, except as otherwise listed in this chapter;

Alcohol beverage sales;

Auction houses (nonlivestock);

Bus depots, transit stations, truck terminals and freight forwarding terminals;

Kennels;

Mobile office structures;

Painting, enameling and lacquering shops;

Recreational vehicle and travel trailer storage facilities;

Truck service stations.

SECTION 4. Section 17.90.020 Definitions of the Kerman Municipal Code is amended by repealing the definitions for “bar, liquor store and tavern,” “off-sale liquor,” and “on-sale liquor”.

SECTION 5. Section 17.90.020 Definitions of the Kerman Municipal Code is amended by amending the definition for “alcohol use” as follows:

"Alcohol Beverage Sales" means 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").

SECTION 6. Title 17 of the Kerman Municipal Code is amended by adding new Chapter 17.100 relating to Alcohol Beverage Sales Uses to read as follows:

CHAPTER 17.100

ALCOHOL BEVERAGE SALES USES

Sections:

- 17.100.010 Purpose.
- 17.100.020 Applicability.
- 17.100.030 Modifications to Existing Businesses.
- 17.100.040 Location Restrictions for New Businesses.
- 17.100.050 Standards of Operation.

Section 17.100.010. Purpose.

The purpose of this chapter is to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare of the City of Kerman by setting standards for all retail activity which includes the sale or dispensing of alcoholic beverages for of on-sale liquor or off-sale liquor. Uses that involve the sale or dispensing of alcoholic beverages may possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when alcohol beverage sales are concentrated in close proximity. In order to ensure that establishments operate in a manner that is mutually beneficial to surrounding uses and to also provided a mechanism to prevent and correct any associated problems, the following special regulations shall apply.

Section 17.100.020. Applicability

A. Conditional Use Permit Requirement. Businesses seeking to sell alcoholic beverages for either on-sale or off-site consumption, whether as a new, altered, or expanded use, shall obtain a Conditional Use Permit for alcohol sales pursuant to this chapter.

B. New or Expanded Use. A Conditional Use Permit in compliance with this chapter shall be required for:

1. Any proposed new establishment that wishes to engage in alcohol beverage sales as defined in Section 17.90.020 of this Code;
2. Any existing establishment that requests to modify its alcohol or business license type(s),

3. Any existing establishment that requests to reinstate their alcohol or business license(s) after an expiration or revocation,
 4. Any existing establishment that requests to extend their hours of alcohol sales, or expand their floor area for retail sales of alcohol. An existing business that expands their floor area for non-alcohol related retail sales is allowed to retain the conditions on their existing Conditional Use Permit in relation to alcohol requirements. Should a business not comply with the strict application of the regulations provided for in this chapter, said improvements shall be made prior to commencing the sale of alcoholic beverages. Violation of these standards at any time may result in the revocation of a Conditional Use Permit.
- C. Exemptions. This chapter does not apply to the following: temporary uses issued a Temporary License by the California Department of Alcoholic Beverage Control and established in compliance with all City laws and ordinances.
- D. A conditional use permit shall not be granted for out of county ABC license transfers.
- E. The Planning Commission shall take into consideration the Police Chief's determination based upon quantifiable information, that the proposed use: (i) would be a detrimental to the public health, safety, comfort, or welfare of persons located within five hundred (500') feet of the site; or (ii) would significantly increase the severity of existing law enforcement or public nuisance problems in the area (e.g. increase in service calls related public intoxication nuisance, vagrancy, or loitering).

17.100.030. Modifications to Existing Businesses. A modification to an existing Alcohol Beverage Sales business increasing the floor ratio for alcohol sales shall not be permitted when a condition exists that has caused or resulted in repeated activities that are harmful to the health, peace, or safety of persons residing or working in the surrounding area. In this section, the term "increasing the floor area ratio" also includes adding outdoor dining.

17.100.040. Location Restrictions for New Businesses. The location restrictions listed in this chapter apply to new establishments and shall also apply to existing establishments that must obtain a CUP pursuant to this chapter due to proposed expansion or improvement of an existing use that is currently operating prior to the effective date of this chapter. The restrictions shall not apply if the proposed expansion or improvement is only with respect to a necessary maintenance or repair, or bringing the existing establishment into compliance with current building codes, including but not limited to the California Building Code, the California Fire Code, California Plumbing Code, and the California Electrical Code, as may be amended and any local amendments thereto.

- A. **New On-Sale:** In over concentrated census tracts, where findings for Public Convenience or Necessity are required for an **On-sale** ABC License the following limitations shall apply:

1. Not more than two (2) on-sale ABC licenses within two hundred (200') feet of another business shall be permitted.
2. No new ABC licenses shall be permitted within five hundred (500') feet of the property line of a school, daycare facility, or church.

B. New **Off-Sale:** In over concentrated census tracts, where findings for Public Convenience or Necessity are required for an **Off-sale** ABC Licenses the following limitations shall apply:

1. ABC license shall be Fresno County transfers only.
2. Not more than one (1) off-sale ABC license within two hundred (200') of an existing on-sale business with an ABC license shall be permitted.
3. Not more than two (2) of different business type/use within five hundred (500') feet of each other shall be permitted. i.e. grocery store / convenience store;
4. Not more than two (2) of the same business type/use within one thousand (1000') feet of each other shall be permitted. i.e. convenience store /convenience store.
5. No new off-sale ABC licenses shall be permitted within one thousand (1000') feet of a school, daycare facility, or church.

17.100.050. Standards of Operation. The following standards of operation shall constitute conditions of approval for Conditional Use Permits under this chapter and include, but are not limited, to:

A. Lighting. The exterior of the premise, including adjacent public sidewalks and all parking lots under the control of the establishment, shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, required illumination shall be placed and/or shielded in a way that minimizes interference with the neighboring residences.

B. Litter and Graffiti.

1. Trash and recycling receptacles shall be provided by public entrances and exits from the building.
2. The owner or operator shall provide for daily removal of trash, litter, and debris from premises and on all abutting sidewalks within 20 feet of the premises.
3. The owner or operator shall remove graffiti within 48 hours.

C. Vending Machines. External snack vending machines are prohibited.

D. Video Surveillance.

1. Establishments must equip a fully functional color digital video camera system.
2. The system must continuously record, store, and be capable of playing back images and be fully functional at all times, including during any hours the business is closed. The system must be maintained in a secured location inside of the business.
3. The system shall have the correct date and time stamped onto the image at all times.
4. The camera storage capacity should be for at least two weeks (14 calendar days). Such cameras must be capable of producing a retrievable and identifiable image than can be made a permanent record and that can be enlarged through projection or other means.
5. If utilizing a digital video recorder, it must be capable of storing no less than 14 days of real-time activities.
6. The system shall be capable of producing a CD or digital playback feature and may be provided to an authorized representative of the Kerman Police Department within 24 hours of the initial request relating to a criminal investigation only.
7. The interior of the business must have at least one camera placed to focus on each cash register transaction to include the clerk as well as the customer waiting area.
8. There shall be four exterior cameras placed so as to record activities in the primary customer parking areas of their business. These cameras should be of sufficient quality to be able to identify persons and or vehicles utilizing the business parking lot.
9. All interior cameras shall record in color.
10. All exterior cameras shall record in color and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.

17.100.060 Signage.

A. The provisions specified under chapter 17.76, Signs and this section shall apply to signage for conditional use permits under this chapter. Where conflicts may occur between the provisions of chapter 17.76 and this section, the more restrictive provisions shall govern.

B. The following copy is required to be prominently posted in a readily visible manner on the business site:

1. "California State Law Prohibits the Sale of Alcoholic Beverages to Persons Under 21 Years of Age."
2. "No Loitering is Allowed On or In Front of These Premises."

3. "No Open Alcoholic Beverage Containers are Allowed on These Premises." (Off-sales only)

C. No more than fifteen percent (15%) of the total window and clear door shall be obstructed by advertising, signs, or other obstructions of any sort.

1. Signage, advertising, or other obstructions inside or outside the business that are not physically attached to the windows or doors, but are visible from a public thoroughfare, sidewalk, or parking lot in the same manner as if they were physically attached is included in the fifteen percent limitation.

2. Any signage required by law shall not count towards the fifteen percent limitation, but shall nonetheless follow rules related to visual obstruction.

4. Advertising and signage on windows and clear doors shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the business, including the area in which the cash registers are maintained, from exterior public sidewalks, parking lots, or entrance to the business.

5. No off-sale ABC business shall advertise alcohol sales in a manner visible from the outside of the establishment, such as from a public thoroughfare, sidewalk, or parking lot.

6. Displays of alcoholic beverages, freestanding advertising structures of any kind such as cardboard floor stands, or other free-standing signs shall be prohibited within ten feet of consumer entrance points, shall not be visible from the exterior of the establishment, and shall be prohibited on the exterior of the establishment.

D. No more than twenty-five square feet or ten percent (10%) of the total on-building signage, whichever is less, shall be allowed for the advertising of alcohol sales. This shall not include signage related to the business and or tenant name. All on-building signage associated with Alcohol Beverage Sales businesses shall be LED pan channel letters or of equal or better quality.

17.100.070. Loitering and Other Nuisance Activities. The operation of the business shall not result in criminal activity or repeated nuisance activities on the property, which may include, but are not limited to, repeated disturbances of the peace, illegal drug activity,

public drunkenness, drinking in public, alcoholic beverage and tobacco sales to minors, harassment of passerby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, graffiti, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or other violations of City, State, or federal laws, especially when contributing to a high rate of police reports and arrests to the area. This section shall not apply to operators where offenses are the result of third party conduct beyond the operators' control.

- E. Training.** The owners and all employees of a business who are involved in the sale of alcoholic beverages must complete approved course(s) in training of liquor sales and handling within sixty days after approval of the Conditional Use Permit becomes final, or for employees hired after the approval of the Conditional Use Permit, within sixty days from the date of hire. To satisfy this requirement, a certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service (CCC/RBS) or other certifying or licensing body designated by the State of California.

SECTION 7. CEQA. A preliminary environmental assessment has been performed for this project pursuant the California Environmental and Quality Act (CEQA). The City Council finds and determines with certainty that, pursuant to CEQA Guidelines Section 15061(b)(3), 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.

SECTION 8. Severability. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 9. Publication. This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

SECTION 10. Effective Date. This ordinance shall become effective thirty (30) days after the date of adoption.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Kerman on _____ and was passed and adopted at a regular meeting of the City Council of the City of Kerman on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing ordinance is hereby approved.

Mayor, City of Kerman

Attest:

Marci Reyes
City Clerk