

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, AMENDING SECTIONS 18.110.020 AND 18.110.050 OF THE RIALTO MUNICIPAL CODE REGARDING THE SALE OF ALCOHOLIC BEVERAGES IN SEALED CONTAINERS FOR OFF-SITE CONSUMPTION**

**WHEREAS**, the State Department of Alcoholic Beverage Control (“ABC”) has regulatory authority over the sale, purchase, and possession of alcoholic beverages, including the issuance and regulation of liquor licenses; and

**WHEREAS**, the ABC has established specific criteria and guidelines, including separation distances, regarding the issuance of liquor licenses to businesses for the sale of alcoholic beverages in sealed containers for off-site consumption, known as off-sale licenses; and

**WHEREAS**, notwithstanding the ABC’s authority over the sale, purchase, and possession of alcoholic beverages, cities may impose certain regulations over businesses that sell alcoholic beverages, pursuant to their valid police powers and land use authority; and

**WHEREAS**, the separation distance requirement enacted in the Rialto Municipal Code regarding the minimum distances between businesses engaging in the off-sale of alcoholic beverages unfairly restricts such businesses; and

**WHEREAS**, the City Council of the City of Rialto desires to promote economic vitality and sustainability of businesses within the community, while still protecting the general health, safety, and welfare of the public, by eliminating the separation distance requirement between businesses that engage in the off-sale of alcoholic beverages and allowing flexibility in the land use regulation of such businesses.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RIALTO FINDS AND  
ORDAINS AS FOLLOWS:**

**Section 1.** The above recitals set forth above are all true and correct and incorporated herein.

**Section 2.** Paragraph B of Section 18.110.020 of the Rialto Municipal Code hereby is amended to read in full as follows:

1 “B. Notwithstanding the foregoing the provisions of this chapter shall not apply  
2 to any of the following:

3 1. Establishments containing fifteen thousand square feet or more of gross  
4 floor area which do not sell alcoholic beverages as their principal  
5 business;

6 2. Establishments which have been engaged in the off-sale of alcoholic  
7 beverages prior to the effective date of the ordinance codified in this  
8 chapter; provided, that such establishments ~~comply with the following~~  
9 ~~conditions:~~

10 ~~a. The establishment retains the same type of retail liquor license within~~  
11 ~~a license classification, and~~

12 ~~b. The licensed establishment is~~ are operated continuously without  
13 substantial change in mode or character of operation. The mode or  
14 character of operation does not include a change in the type of retail  
15 liquor license within a license classification. For purposes of this  
16 subdivision a break in continuous operation does not include:

17 ~~i. a.~~ A closure for not more than thirty days for purposes of repair, if  
18 that repair does not change the nature of the licensed premises  
19 and does not increase the square footage of the premises used for  
20 the sale of alcoholic beverages, or

21 ~~ii. b.~~ The closure for restoration of premises rendered totally or  
22 partially inaccessible by an act of God or other accident beyond  
23 the control of the establishment, if the restoration does not  
24 increase the square footage of the premises used for the sale of  
25 alcoholic beverages and the restoration complies with and is  
26 permitted by all other applicable provisions of this code  
27 including, without limitation Chapter 18.60 of this title; or  
28

1                   iii. c. A brewpub or microbrewery which has located at its premises  
2                   or on property contiguous thereto a bona fide public eating place  
3                   or establishment provided that the brewpub or microbrewery may  
4                   only sell beer produced and bottled, or produced and packaged, or  
5                   produced elsewhere and bottled or packaged on the premises of  
6                   the brewpub or microbrewery for on-site and off-site  
7                   consumption.”

8                   **Section 3.** Section 18.110.050 of the Rialto Municipal Code hereby is amended to read in  
9 full as follows:

10                   “A.      A business or establishment may not engage in the off-sale of alcoholic  
11                   beverages unless it is to be located in accordance with the following site location  
12                   criteria:

13                   A1. Separation Distance from Schools. No such business shall be located  
14                   within one thousand feet from the boundary of an existing public or  
15                   private elementary, middle junior high or high school, preschool or  
16                   kindergarten, or any such proposed school site as designated by the  
17                   applicable school district's board of education or other governing body.

18                   B2. Separation from Churches and Public Parks. No such business shall be  
19                   located within five hundred feet of any existing church or public park.

20                   C3. Separation from Residential Areas. No such business shall be located  
21                   within one hundred feet of any existing residential dwelling or property  
22                   zoned for any residential use.

23                   D4. Separation Distances between Similar Establishments. ~~Any such~~  
24                   ~~business shall be located a minimum distance of one thousand feet from~~  
25                   ~~any existing business licensed by the state of California Department of~~  
26                   ~~Alcoholic Beverage Control for off-sale general alcoholic beverage sales~~  
27                   ~~with less than fifteen thousand square feet of gross floor area. There is no~~  
28                   minimum separation distance required between establishments offering

1                   alcoholic beverages for sale for off-site consumption approved under the  
2                   provisions of this chapter.

3       B. No school, church, public park or residential use, where such uses are  
4       conditionally permitted, may be established near an existing business or  
5       establishment engaged in the off-sale of alcoholic beverages unless it is to be located  
6       in accordance with the following site location criteria:

7                   1. Schools. No public or private elementary, middle junior high or high  
8                   school, preschool or kindergarten, or any such proposed school site as  
9                   designated by the applicable school district's board of education or other  
10                  governing body shall be located within one thousand feet from the  
11                  boundary of an existing, approved business or establishment engaged in  
12                  the off-sale of alcoholic beverages.

13                  2. Churches and Public Parks. No church or public park shall be located  
14                  within five hundred feet of any existing, approved business or  
15                  establishment engaged in the off-sale of alcoholic beverages.

16                  3. Residential Areas. No residential dwelling or property zoned for any  
17                  residential use shall be located within one hundred feet of any existing,  
18                  approved business or establishment engaged in the off-sale of alcoholic  
19                  beverages.

20                  This subsection B shall not apply to schools, churches, public parks, or  
21                  residential uses in zones where such uses are permitted by right.

22       ~~E.~~ For purposes of this section, all measurements shall be made by following the  
23       shortest, direct route from the property line of the point or location in question to the  
24       nearest point upon the outside wall of the building or building lease space of the  
25       existing, approved establishment offering alcoholic beverages for sale for off-site  
26       consumption.”

27       **Section 4**       Section 18.110.090 is hereby added to Title 18, Chapter 18.110 of the Rialto  
28       Municipal Code section as follows:

1           **“Determinations of Public Convenience or Necessity**

2           A.       Purpose. The purpose of this chapter is to provide appropriate feedback to the  
3           State of California in connection with the issuance of licenses for the off-sale of  
4           alcoholic beverages by the California Department of Alcoholic Beverage Control in  
5           those areas that are deemed to be over-concentrated with off-sale outlets or those  
6           areas that are considered high crime, as specified in Business and Professions Code  
7           Section 23958 et seq., as the same may be amended from time to time.

8           B.       Definitions.

- 9                   1. "Determination" means a determination of public convenience or  
10                   necessity by the City of Rialto to assist the State of California in the  
11                   issuance of licenses for the off-sale of alcoholic beverages by the  
12                   California Department of Alcoholic Beverage Control in those areas that  
13                   are deemed to be over-concentrated with off-premises sale outlets or  
14                   those areas that are considered high crime, as specified in Business and  
15                   Professions Code 23958 et seq., as the same may be amended from time  
16                   to time.
- 17                   2. "Director," for the purposes of and as used in this chapter, means the  
18                   Director of Development Services.

19           C.       Request for Determination.

- 20                   1. Whenever a request for a determination in connection with the issuance  
21                   of a license for the off-sale of alcoholic beverages by the California  
22                   Department of Alcoholic Beverage Control is submitted to the city as  
23                   allowed under California Business and Professions Code Section  
24                   23958.4, as the same may be amended from time to time, the  
25                   determination request shall be processed utilizing the process provisions  
26                   of a conditional development permit contained in Chapter 18.66 of this  
27                   Code.

1                   2. Subject to the provisions of this section, the planning commission shall  
2                   hold a public hearing, review an application for a determination, and may  
3                   issue a determination of public convenience or necessity in connection  
4                   with an application for a license from the California Department of  
5                   Alcoholic Beverage Control for the off-sale of alcoholic beverages only  
6                   after making all of the findings required in subsection D below.

7                   3. The planning commission's decision on the determination shall be  
8                   appealable to the city council, pursuant to the procedures set forth in  
9                   Chapter 18.68 of the Rialto Municipal Code.

10           D. Required Findings.

11                   The following findings must be made prior to any determination under this  
12                   section:

13                   1. The proposed use is not located within an area designated by the city for  
14                   targeted neighborhood enhancement services or programs, or located  
15                   within an area in which the chief of police has determined, based upon  
16                   quantifiable information, that the proposed use: (a) would be detrimental  
17                   to the public health, safety, or welfare of persons located in the area; or  
18                   (b) would significantly increase the severity of existing law enforcement  
19                   or public nuisance problems in the area; and

20                   2. The proposed use would not lead to the grouping of more than four off-  
21                   sale of alcoholic beverage uses within a one thousand-foot radius from  
22                   the exterior of the building containing the proposed use; and

23                   3. The proposed use complies with the site location criteria under Section  
24                   18.110.050; and

25                   4. At least one of the following additional findings:

26                   a.     The census tract in which the proposed outlet for the off-sale of  
27                   alcoholic beverages is located is unusually configured and the  
28                   proposed outlet would act as a convenience to an underserved

portion of the community without presenting a significant adverse  
impact on public health or safety; or

b. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or

c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over- concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area.

E. Nothing contained in this section shall be deemed or construed as requiring the planning commission or city council to issue a determination under the provisions of this section. Under no circumstances shall a requestor for a determination under this section have a right to such determination, and nothing contained in this section shall be deemed or construed to confer upon any requestor a right to have a determination made for any particular site.”

**Section 5.** If any provision of this Ordinance is held invalid, such invalidity shall not affect the remaining provisions of this Ordinance, which shall remain in effect absent the provision held to be invalid, and to this end, the provisions of this Ordinance are declared to be severable.

**Section 6.** The City Clerk shall certify to the adoption of this Ordinance and cause the same to be published in the local newspaper, and the same shall take effect thirty (30) days after its date of adoption.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2017.

DEBORAH ROBERTSON, Mayor

1 ATTEST:

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4 BARBARA McGEE, City Clerk

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7 APPROVED AS TO FORM

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10 FRED GALANTE, City Attorney

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1 STATE OF CALIFORNIA )  
COUNTY OF SAN BERNARDINO ) ss  
2 CITY OF RIALTO )

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4 I, Barbara McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing  
5 Ordinance No. \_\_\_\_\_ was duly passed and adopted at a regular meeting of the City Council of  
6 the City of Rialto held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

7 Upon motion of Councilmember \_\_\_\_\_, seconded by Councilmember  
8 \_\_\_\_\_, the foregoing Ordinance No. \_\_\_\_\_ was duly passed and adopted.

9 Vote on the Motion:

10 AYES:

11 NOES:

12 ABSENT:

13 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the  
14 City of Rialto, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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19 Barbara A. McGee, City Clerk  
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