

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;

**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 amending certain portions of the Zoning Code to eliminate the separation distance requirement between businesses that engage in the off-sale of alcoholic beverages and allow flexibility in the land use regulation of such businesses (“Ordinance Amendment”); and

**WHEREAS**, the City Council determines that the Ordinance Amendment is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15060(c)(2), because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the Ordinance Amendment can have an impact on the environment for the reasons

1 noted herein; accordingly, the City Council directs that a Notice of Exemption be filed with the San  
2 Bernardino County Clerk pursuant to CEQA Guidelines Section 15062; and

3 **WHEREAS**, on February 28, 2018 the Planning Commission conducted a duly noticed  
4 public hearing at which time it received input from staff and the city attorney, heard public  
5 testimony, discussed the proposed Ordinance Amendment, and after considering both oral and  
6 written testimony, closed the public hearing, and thereafter recommended approval of the proposed  
7 Ordinance Amendment; and

8 **WHEREAS**, on June 12 , 2018 the City Council conducted a duly noticed public hearing at  
9 which time it received input from staff and the city attorney, heard public testimony, discussed the  
10 proposed Ordinance Amendment, and after considering both oral and written testimony, closed the  
11 public hearing.

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

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

16 **Section 2.** The City Council hereby adopts the original findings and recommendations of  
17 the Planning Commission and finds that the Ordinance Amendment is consistent with the General Plan.

18 **Section 3.** Section 18.110.020 of the Rialto Municipal Code hereby is amended to read  
19 in full (deletions in ~~striketrough~~ and additions in ***bold & italic***) as follows:

20 “A. The provisions of this chapter shall apply to the new development of, or the  
21 conversion of an existing building or structure into, an establishment offering  
alcoholic beverages for sale for off-site consumption.

22 B. Except for section 18.110.050, the provisions of this chapter shall also apply to  
23 any existing establishment engaged in the off-sale of alcoholic beverages that  
24 changes or proposes to change the type of license within the off-sale license  
classification or that increases or proposes to increase the square footage of the  
premises used for the sale of alcoholic beverages.

25 C Notwithstanding the foregoing, the following establishments are  
26 exempt from the provisions of this chapter and the provisions shall  
27 not apply to any of the following:

- 28 1. Establishments containing fifteen thousand square feet or more of gross  
floor area that do not sell alcoholic beverages as their principal business;

- 1                   2. Establishments that engaged in the off-sale of alcoholic beverages prior  
2                   to the effective date of the ordinance codified in this chapter; provided  
3                   that such establishments comply with the following conditions:
- 4                   a. The establishment retains the same type of retail liquor license  
5                   within a license classification, and
  - 6                   b. The licensed establishment is operated continuously without  
7                   substantial change in mode or character of operation. For purposes  
8                   of this subdivision a break in continuous operation without change  
9                   in mode or character of operation does not include:
    - 10                   i. A closure for not more than thirty days for purposes of repair, if  
11                   that repair does not change the nature of the licensed premises  
12                   and does not increase the square footage of the premises used  
13                   for the sale of alcoholic beverages, or
    - 14                   ii. The closure for restoration of premises rendered totally or  
15                   partially inaccessible by an act of God or other accident beyond  
16                   the control of the establishment, if the restoration does not  
17                   increase the square footage of the premises used for the sale of  
18                   alcoholic beverages and the restoration complies with and is  
19                   permitted by all other applicable provisions of this code  
20                   including, without limitation Chapter 18.60 of this title; or
    - 21                   iii. A brewpub or microbrewery which has located at its premises or  
22                   on property contiguous thereto a bona fide public eating place  
23                   or establishment provided that the brewpub or microbrewery  
24                   may only sell beer produced and bottled, or produced and  
25                   packaged, or produced elsewhere and bottled or packaged on the  
26                   premises of the brewpub or microbrewery for on-site and off-  
27                   site consumption.”

17                   The text of Section 18.110.050 of the Rialto Municipal Code hereby is amended to read in full  
18                   (deletions in ~~strike through~~ and additions in ***bold & italic***) as follows:

19                   ***A.***     A business or establishment may not engage in the off-sale of alcoholic  
20                   beverages unless it is to be located in accordance with the following site location  
21                   criteria:

- 22                   ***A1.***    Separation Distance from Schools. No such business shall be located  
23                   within one thousand feet from the boundary of an existing public or  
24                   private elementary, middle junior high or high school, preschool or  
25                   kindergarten, or any such proposed school site as designated by the  
26                   applicable school district's board of education or other governing body.
- 27                   ***B2.***    Separation from Churches and Public Parks. No such business shall be  
28                   located within five hundred feet of any existing church or public park.
- 29                   ***C3.***    Separation from Residential Areas. No such business shall be located  
30                   within one hundred feet of any existing residential dwelling or property  
31                   zoned for any residential use.
- 32                   ***D4.***    Separation Distances between Similar Establishments. ~~Any such~~  
33                   ~~business shall be located a minimum distance of one thousand feet from~~  
34                   ~~any existing business licensed by the state of California Department of~~  
35                   ~~Alcoholic Beverage Control for off-sale general alcoholic beverage~~

1                   ~~sales with less than fifteen thousand square feet of gross floor area.~~  
2                   *There is no minimum separation distance required between*  
3                   *establishments offering alcoholic beverages for sale for off-site*  
4                   *consumption approved under the provisions of this chapter.*

5       ~~E.B. For purposes of this section, all measurements shall be made by following~~  
6       ~~the shortest, direct route from the property line of the point or location in question~~  
7       ~~to the nearest point upon the outside wall of the building or building lease space of~~  
8       ~~the existing, approved establishment offering alcoholic beverages for sale for off-~~  
9       ~~site consumption~~ *distances shall be measured by airline from the closest edge of*  
10       *any school, day care, church, or residential structure to the closest edge of the*  
11       *premises or the closest edge of the parking lot or parking area of the*  
12       *establishment for off-sale of alcoholic beverages, whichever distance is shorter.*  
13       *Parking lot or parking area of an establishment for off-sale of alcoholic*  
14       *beverages refers to a lot or area maintained for the benefit of patrons of the*  
15       *establishment, or if multiple businesses are in the vicinity of the establishment,*  
16       *the parking area shall be determined by the area necessary to comply with the*  
17       *off-street parking requirements of this code or that which is reasonably necessary*  
18       *to accommodate the anticipated parking needs of the establishment.”*

19       Section 18.110.090 is hereby added to Title 18, Chapter 18.110 of the Rialto Municipal Code  
20       section as follows:

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

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

29       ***B. Definitions.***

30                   1. *"Determination" means a determination of public convenience*  
31                   *or necessity by the City of Rialto to assist the State of California*  
32                   *in the issuance of licenses for the off-sale of alcoholic beverages*  
33                   *by the California Department of Alcoholic Beverage Control in*  
34                   *those areas that are deemed to be over-concentrated with off-*  
35                   *premises sale outlets or those areas that are considered high*  
36                   *crime, as specified in Business and Professions Code 23958 et*  
37                   *seq., as the same may be amended from time to time.*

38                   2. *"Director," for the purposes of and as used in this chapter, means*  
39                   *the Director of Development Services.*

40       ***C. Request for Determination.***

41                   1. *Whenever a request for a determination in connection with the*  
42                   *issuance of a license for the off-sale of alcoholic beverages by the*  
43                   *California Department of Alcoholic Beverage Control is submitted to*  
44                   *the city as allowed under California Business and Professions Code*  
45                   *Section 23958.4, as the same may be amended from time to time, the*

determination request shall be processed utilizing the process provisions of a conditional development permit contained in Chapter 18.66 of this Code.

2. Subject to the provisions of this section, the planning commission shall hold a public hearing, review an application for a determination, and may issue a determination of public convenience or necessity in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-sale of alcoholic beverages only after making all of the findings required in subsection D below.
3. The planning commission's decision on the determination shall be appealable to the city council, pursuant to the procedures set forth in Chapter 18.68 of the Rialto Municipal Code.

**D. Required Findings.**

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

1. The proposed use is not located within an area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined, based upon quantifiable information, that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would significantly increase the severity of existing law enforcement or public nuisance problems in the area; and
2. The proposed use would not lead to the grouping of more than four off-sale of alcoholic beverage uses within a one thousand-foot radius from the exterior of the building containing the proposed use; and
3. The proposed use complies with the site location criteria under Section 18.110.050; and
4. At least one of the following additional findings:
  - a. The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the 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

1 *be deemed or construed to confer upon any requestor a right to have a determination*  
2 *made for any particular site.”*

3 **Section 6.** If any provision of this Ordinance is held invalid, such invalidity shall not  
4 affect the remaining provisions of this Ordinance, which shall remain in effect absent the provision  
5 held to be invalid, and to this end, the provisions of this Ordinance are declared to be severable.

6 **Section 7.** The City Clerk shall certify to the adoption of this Ordinance and cause the  
7 same to be published in the local newspaper, and the same shall take effect thirty (30) days after its  
8 date of adoption.

9 PASSED, APPROVED AND ADOPTED this \_12th\_\_\_ day of June 2018.

10  
11 \_\_\_\_\_  
12 DEBORAH ROBERTSON, Mayor

13  
14 ATTEST:

15  
16 \_\_\_\_\_  
17 BARBARA McGEE, City Clerk

18  
19  
20 APPROVED AS TO FORM

21  
22 \_\_\_\_\_  
23 FRED GALANTE, City Attorney

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

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  
6 of the City of Rialto held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

10 Vote on the Motion:

11 AYES:

12 NOES:

13 ABSENT:

14 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the  
15 City of Rialto, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

16  
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19 \_\_\_\_\_  
20 Barbara A. McGee, City Clerk  
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