

## ORDINANCE NO. 784

### AN ORDINANCE OF THE CITY COUNCIL CITY OF THE CITY OF CRESCENT CITY ADDING CHAPTER 17.88, SALE OF ALCOHOLIC BEVERAGES, TO TITLE 17, ZONING, OF THE CRESCENT CITY MUNICIPAL CODE

WHEREAS, on April 21, 2014, the City Council adopted Ordinance No. 780, An Interim Urgency Zoning Ordinance of the City of Crescent Placing a Temporary Prohibition on the Establishment of Tobacco Retailers and Offsite Sale Alcoholic Beverage Retailers in response to the City's need to prepare and adopt regulations pertaining to the siting and regulation of these retailers;

WHEREAS, on June 2, 2014, the City Council extended Ordinance No. 780 for an additional 10 months and 15 days to give staff and the Planning Commission time to draft, review and recommend appropriate regulations to the City Council;

WHEREAS, the basis for the interim urgency zoning ordinance remains true today, the unregulated siting and establishment of alcoholic beverage retailers in this small community is a threat to the public health, safety, and welfare as well as zoning compatibility;

WHEREAS, alcohol is the third leading lifestyle-related cause of death for the nation<sup>1</sup> and can result in both short-term and long-term health problems including the following:

- Injuries, falls, drowning, burns and unintentional firearm injuries;<sup>2</sup> violence;<sup>3</sup> alcohol poisoning;<sup>4</sup> and birth defects;<sup>5</sup>
- Neurological problems including stroke and dementia;<sup>6</sup>
- Cardiovascular problems;<sup>7</sup>
- Psychiatric problems, including depression, anxiety and suicide;<sup>8</sup>
- Cancer of the mouth, throat, esophagus, liver, colon and breast;<sup>9</sup>

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1 Mokdad AH, Marks JS, Stroup DF, Gerberding JL. Actual causes of death in the United States, 2000. *JAMA* 2004;291(10):1238–1245.

2 Smith GS, Branas CC, Miller TR. Fatal nontraffic injuries involving alcohol: a metaanalysis. *Ann of Emer Med* 1999;33(6):659–668.

3 Greenfield LA. Alcohol and Crime: An Analysis of National Data on the Prevalence of Alcohol Involvement in Crime [PDF 229 KB]. Report prepared for the Assistant Attorney General's National Symposium on Alcohol Abuse and Crime. Washington, DC: U.S. Department of Justice, 1998.

4 Sanap M, Chapman MJ. Severe ethanol poisoning: a case report and brief review. *Crit Care Resusc* 2003;5(2):106–108.

5 American Academy of Pediatrics, Committee on Substance Abuse and Committee on Children with Disabilities. 2000. Fetal alcohol syndrome and alcohol-related neurodevelopmental disorders. *Pediatrics* 2000;106:358–361.

6 Corrao G, Rubbiati L, Zambon A, Arico S. Alcohol-attributable and alcohol-preventable mortality in Italy. A balance in 1983 and 1996. *European J of Public Health* 2002;12:214–223; Corrao G, Bagnardi V, Zambon A, La Vecchia C. A meta-analysis of alcohol consumption and the risk of 15 diseases. *Prev Med* 2004;38:613–619.

7 Rehm J, Gmel G, Sepos CT, Trevisan M. Alcohol-related morbidity and mortality. *Alcohol Research and Health* 2003;27(1):39–51.

8 Castaneda R, Sussman N, Westreich L, Levy R, O'Malley M. A review of the effects of moderate alcohol intake on the treatment of anxiety and mood disorders. *J Clin Psychiatry* 1996;57(5):207–212.

- Diseases of the liver, including hepatitis and cirrhosis;<sup>10</sup>

WHEREAS, alcohol is the most commonly used and abused drug among youth in the United States and is responsible for more than 4300 deaths per year along underage youth;<sup>11</sup>

WHEREAS, youth that begin drinking before the age of 15 are five times more likely to develop alcohol dependence or alcohol abuse later in life than those who begin drinking after age 21;<sup>12</sup>

WHEREAS, the ability of law enforcement to view the public area of the retailer will aid in the enforcement of laws relating to the purchase and sale of alcohol, public intoxication, theft, solicitation, burglary, robbery, etc.;

WHEREAS, the Planning Commission has reviewed and considered proposed zoning regulations for alcoholic beverage retailers and has officially made a recommendation to the City Council to amend the City's municipal code as set forth herein (APP# MCA 15-01); and

WHEREAS, the City Council has reviewed and approved the planning commission's recommendation;

NOW, THEREFORE, the City Council of the City of Crescent City, State of California does hereby ordain as follows:

**SECTION 1. RECITALS.** The City Council finds that the above recitals are true and correct and are incorporated herein as if set forth in full.

**SECTION 2. FINDINGS.** The City Council makes the following required findings:

- 2.1. The proposed amendment is consistent with the Crescent City General Plan.
- 2.2. The proposed amendment would not be detrimental to the health, safety, welfare, or public interest of the City.
- 2.3. The proposed amendment is internally consistent and does not conflict with the purposes, regulations and required findings of the Zoning Ordinance.
- 2.4. The project is exempt from CEQA under the General Rule that states that CEQA applies only to projects which have the potential for causing a significant effect on the environment (CEQA Guidelines §15061[b][3]).

**SECTION 3. CEQA FINDINGS.** The city Council finds that this Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it

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9 Baan R, Straif K, Grosse Y, Secretan B, et al. on behalf of the WHO International Agency for Research on Cancer Monograph Working Group. Carcinogenicity of alcoholic beverages. *Lancet Oncol.* 2007;8:292–293.

10 Heron MP. Deaths: Leading causes for 2004 Adobe PDF file [PDF–3.16MB]. National vital statistics reports; vol 56 no 5. Hyattsville, MD: National Center for Health Statistics. 2007.

11 Centers for Disease Control and Prevention (CDC). Alcohol-Related Disease Impact (ARDI). Atlanta, GA: CDC.

12 Hingson RW, Heeren T, Winter MR. Age at drinking onset and alcohol dependence: age at onset, duration, and severity. *Pediatrics* 2006;160:739–746; Office of Applied Studies. The NSDUH Report: Alcohol Dependence or Abuse and Age at First Use. Rockville, MD: Substance Abuse and Mental Health Services Administration, October 2004.

can be seen with certainty that it will not have a significant effect on the environment and therefore is not subject to CEQA.

**SECTION 4. SEVERABILITY.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision will not affect the validity of the remaining portions of this Ordinance. The City Council declares that they would have adopted this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

**SECTION 5. PUBLICATION.** The City Clerk shall cause this ordinance to be published in a newspaper of general circulation in Del Norte County once within 15 days of its adoption in accordance with the requirements of Government Code Section 36933.

**SECTION 6. EFFECTIVE DATE.** This Ordinance will become effective on the 31<sup>st</sup> day following the date of adoption.

**SECTION 7. REPEAL.** Upon the effective date of this Ordinance, all provisions contained in Interim Urgency Zoning Ordinance No. 780 pertaining to the siting and regulation of alcoholic beverage retailers are automatically repealed and no longer valid.

**SECTION 8. CODE AMENDMENT.** The Crescent City Municipal Code is hereby amended to add Chapter 17.88, Sale of Alcoholic Beverages, to Title 17, Zoning as follows:

#### **CHAPTER 17.88 – SALE OF ALCOHOLIC BEVERAGES**

##### **17.88.010. Purpose and Intent.**

The purpose of regulating the sale of alcohol is to ensure the compatibility of such uses with surrounding uses and properties and to avoid any negative impacts associated with such uses. Therefore, in order to protect and preserve the public health, safety and welfare, the City Council has determined that special regulations, review of proposed business operations, and approval of a conditional use permit by the Planning Commission is necessary.

##### **17.88.020. Definitions.**

As used in this chapter, the following words and phrases are defined as follows:

- A. **“Alcohol”** means any bottled or prepared beverage with more than one-half of one percent (0.005%) alcohol content per volume. This includes any beer, wine, wine cooler, frozen mixed drink, hard alcohol or spirits, liqueur or any other variation of a drink with alcoholic content.
- B. **“Convenience Stores”** means a retail store of 3,500 square feet or less in gross floor area that carries a range of merchandise oriented to daily convenience and travelers' shopping needs. Convenience stores also include establishments that sell motor vehicle fuels.
- C. **“Liquor Store”** means a retail store primarily engaged in the sale of alcohol.

- D. **“On-Sale Alcohol”** means any drink served and/or prepared at the site with the intent of buying and drinking at this same site. This includes any bar or any bar affiliated with a restaurant.
- E. **“Off-Sale Alcohol”** means any drink served at a site with the intention of buying the drink there and taking it somewhere private to drink.
- F. **“Public Convenience or Necessity”** means the grouping of criteria that is considered when making the determination of whether a new site where alcohol will be bought and sold will be established.

**17.88.030. Review Process.**

Before the opening of a new business, extending the hours of operation of any establishment that sells or serves any alcoholic beverage, or adding to the capacity, floor area or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages, the applicant must first obtain a conditional use permit from the Planning Commission. Conditions of approval will vary with each application including location, on-sale or off-sale business, public convenience and necessity, and any other, city, state, and federal laws that may apply. The criteria that will be followed to approve the conditional use permit are as follows:

- A. **Conditional Use Permit.** The Planning Commission must review all conditional use permit request for proposed alcohol sales. The following information must be provided to the Planning Commission to approve conditional use permit requests:
  1. A list of all establishments within a one thousand (1,000) foot radius with similar size and array of products. If there is any other establishment, other than a food service establishment with incidental service of beer and/or wine within a one thousand (1,000) foot radius of the site of the proposed use that is in the same category of alcoholic beverage sales or service and the State Department of Alcoholic Beverage Control finds that the request will result in an overconcentration of alcohol sales within the applicable Census Tract, then the Planning Commission may not approve the application unless it makes all of the findings of “public convenience or necessity”;
  2. The number of businesses having authority to sell alcoholic beverages in the census tract of the subject site;
  3. The extent to which the crime reporting district in which subject site is located exceeds the average for crime reporting districts subject to the jurisdiction of the Police Department;
  4. The proximity of the subject site to school, park, playground, recreational center, day care, or similar use.
- B. **Public Convenience or Necessity.** A determination of Public Convenience or Necessity (PCN) is required by the Department of Alcoholic Beverage Control (ABC) when there is an overconcentration of alcohol sales licenses within a defined census tract. ABC determines if there is an overconcentration of licenses in a census tract and will require a determination of public convenience or necessity from the city. The Planning

Commission must make a PCN determination prior to consideration of a conditional use permit to allow alcohol sales.

- C. PCN Findings.** To approve a PCN determination, the following findings must be made:
1. The proposed establishment will promote the city's economic health, consistent with the General Plan and any applicable Specific Plan policies to further district purposes;
  2. The applicant has not operated a licensed establishment, which has been the subject of verified, complaints, or violations regarding alcohol, public safety or nuisance statutes or regulations;
  3. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area;
  4. Alcoholic beverages sold by the applicant are incidental to the other products available for sale at the establishment.
- D. Commercial zones.** The sale of alcoholic beverages for off-premises consumption may only be allowed by conditional use permit in the following zones: C-1, C-2 and CW.
- E. Distance consideration.** The Planning Commission may take into consideration the proximity of the proposed Alcohol Retailer with parcels occupied by the following uses:
1. Schools (public or private);
  2. Churches or other places of worship;
  3. Hospitals, clinics, or other health care facilities; and
  4. Public parks and playgrounds and other similar uses.
  5. Residential uses
- F. Revocation of use permit.** If any of conditions are found to be disregarded, the use permit for alcohol sales will be subject to revocation. If necessary, the Planning Commission may modify the use permit after holding a noticed public hearing and making applicable findings.
- G. Optional conditions.** Further conditions may be imposed upon the issuance of a use permit for on-sale or off-sale liquor establishments.

#### **17.88.040. Standard Regulations for the Sale of Alcohol**

- A. Education and training of employees.** All employees must be trained with the knowledge and skills that will enable them to comply with their responsibilities under law. The knowledge and skills deemed necessary for responsible alcoholic beverage service must include the following topics and skills development:
1. State laws relating to alcoholic beverages, particularly ABC and penal provisions concerning sales to minors and intoxicated persons, driving under the influence, hours of legal operation, and penalties for violations of these laws.
  2. The effects of alcohol on the body, and behavior, including how the effects of alcohol affect the ability to operate a motor vehicle.
  3. Methods for dealing with intoxicated customers and recognizing underage customers.

- B. Litter.** The premises that is the subject of the use permit must be maintained free of litter.
- C. Signs.** No signs advertising the sale of alcoholic beverages may be displayed outside of the store.
- D. Loitering.** Loitering of persons about the premises must not be tolerated or permitted.
- E. On-Sale Business.** An on-sale establishment must comply with the following regulations:
1. No sale of alcohol is allowed for off-site consumption;
  2. The noise levels generated by the operation of such establishment must not negatively impact adjoining properties;
  3. Exterior lighting and interior lighting must be sufficient to provide illumination for security and safety and to make easily discernable the appearance and condition of persons. On-site lighting plans must be submitted for review and approval;
  4. Alcohol must not be sold or served to any persons who are discernibly intoxicated;
  5. No vegetation around the site that can be used as a hiding place;
  6. A sign concerning the California law prohibiting minors to drink alcohol and a sign prohibiting trespassing or public drinking must be posted; and
  7. A copy of the conditions of approval must be kept on premises and available upon request.

**E. Off-sale business.** An off-site establishment must comply with the following regulations:

1. No sale of alcohol is allowed for on-site consumption;
2. Music and other forms of amplified noise must not be audible from the exterior of any premises;
3. Alcohol must not be sold to any persons who are discernibly intoxicated;
4. Exterior lighting and interior lighting must be sufficient to provide illumination for security and safety and to make easily discernable the appearance and condition of persons. On-site lighting plans must be submitted for review and approval;
8. Trash receptacles must be located at convenient locations outside the establishment, and operators of the business must remove all trash on a daily basis;
9. Pay telephones on the site of the establishment, when applicable, must be of the type that only allow outgoing calls;
10. A sign concerning the California law prohibiting minors to drink alcohol and a sign prohibiting trespassing and/or public drinking must be posted;
11. A copy of any use permit conditions of approval will need to be kept on premises and available upon request;
12. Any employee on duty between 10:00 p.m. and 2:00 a.m. will be at least twenty-one (21) years of age;
13. Must attempt to limit alcohol related problems which negatively impact those living or working in the neighborhood;

14. Liquor stores and convenience stores must have glass or transparent glazing in the windows and doors. No more than ten percent (10%) of any window or door area may be visually obstructed by signs, banners, or opaque coverings of any kind so that law enforcement personnel will have clear view of the entire public area in the premises from the public sidewalk;
15. Graffiti must be removed within 72 hours of application; and
16. Stores must contain a security camera system which must be operated during business hours.

**F. Additional regulations for off-sale businesses that sell motor vehicle fuel and alcohol.** The following additional regulations apply to establishments that offer the concurrent sale of motor vehicle fuels and alcohol for off-premises consumption:

1. Only beer and wine may be sold.
2. The owner of each location and the management at each location must educate the public regarding driving under the influence of intoxicating beverages, minimum age for purchase and consumption of alcoholic beverages, driving with open containers and the penalty associated with violation of these laws. In addition, the owner and management must provide health warnings about the consumption of alcoholic beverages. This educational requirement may be met by posting prominent signs, decals or brochures at points of purchase. In addition, the owner and management must provide adequate training for all employees at the location as to these matters.
3. No displays of beer, wine or other alcoholic beverages may be located within five feet of any building entrance or checkout counter.
4. Cold beer or wine must be sold from, or displayed in, the main, permanently affixed electrical coolers only.
5. No beer, wine or other alcoholic beverages advertising may be located on gasoline islands; and no lighted advertising for beer, wine, or other alcoholic beverages may be located on the exterior of buildings or within window areas.
6. Employees selling beer and wine between the hours of 10:00 p.m. and 2:00 a.m. must be at least twenty-one (21) years of age.
7. No sale of alcohol may be made from a drive-up window.

**[End of Section]**

**PASSED, APPROVED, AND ADOPTED** at a regular meeting by the City Council of the City of Crescent City on this 20th day of April, 2015.

AYES: Council Member Holley, Council Member Inscore, Council Member Murray, Pro Tem Enea, Mayor Gastineau

NOES: None

ABSTAIN: None

ABSENT: None



Ron Gastineau, Mayor

ATTEST:



Kymmie Scott, Deputy City Clerk

APPROVED AS TO FORM:



Martha D. Rice, Deputy City Attorney