

1 [Police, Administrative Codes - Alcohol Regulation]

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3 **Ordinance amending the Police Code to prohibit possession of an open alcohol**
4 **container at any premises with an off-sale license from the Alcohol Beverage Control**
5 **Board, and to require some conditions before the Board of Supervisors may consider**
6 **granting any licensee a letter of public convenience and necessity under California**
7 **Business and Professions Code, Section 23958.4; amending the Administrative Code**
8 **to impose additional reporting requirements from the Police Department to the Board**
9 **of Supervisors; and making environmental findings.**

10 NOTE: Additions are *single-underline italics Times New Roman*;
11 deletions are *strike-through italics Times New Roman*.
12 Board amendment additions are double-underlined;
13 Board amendment deletions are ~~strikethrough normal~~.

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14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. The Planning Department has determined that the actions contemplated in
16 this ordinance comply with the California Environmental Quality Act (California Public
17 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
18 Board of Supervisors in File No. _____ and is incorporated herein by reference.

19 Section 2. The Police Code is hereby amended by amending Section 21, to read as
20 follows:

21 **SEC. 21. CONSUMING ALCOHOLIC BEVERAGES ON PUBLIC STREETS, ETC.,**
22 **OR ON PUBLIC PROPERTY OPEN TO PUBLIC VIEW, AND POSSESSING OPEN ALCOHOL**
23 **BOTTLES OR CONTAINERS AT LICENSED PREMISES PROHIBITED; PENALTY.**

24 (a) Except as provided in subsection (c), nNo person shall consume any alcoholic
25 beverage in any quantity;

1 (1) ___ on any public street, avenue, sidewalk, stairway, alley, or thoroughfare
2 within the City and County of San Francisco; ~~nor shall any person consume any alcoholic beverage~~

3 (2) ___ within 15 feet of any public way or thoroughfare while on a private
4 stairway, doorway, or other private property open to public view without the express or implied
5 permission of the owner, his agent, or the person in lawful possession thereof; ~~provided,~~
6 ~~however, that t~~

7 (b) No person who has in his or her possession any bottle, can or other receptacle
8 containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which
9 have been partially removed, shall enter, be, or remain on the posted premises of any retail package
10 off-sale alcoholic beverage licensee licensed pursuant to Division 9 (commencing with Section 23000)
11 of the Business and Professions Code.

12 (1) As used this subsection (b), "posted premises" means those premises which are
13 subject to licensure under any retail package off-sale alcoholic beverage license and the parking lot
14 immediately adjacent to the licensed premises (except private residential parking lots outside the direct
15 ownership or control of the licensee), on which clearly visible notices indicate to the patrons of the
16 licensee and parking lot that the provisions of this subsection (b) are applicable.

17 (2) Licensees are required to post a sign on the premises advising patrons of this
18 subsection (b). The sign shall be in a conspicuous place and readily observable. It shall be 18 inches
19 by 24 inches in size and read as follows: "It is an infraction for any person who possesses any bottle,
20 can or other receptacle containing any alcoholic beverage which has been opened, or the seal broken,
21 or the contents of which have been partially removed, to enter, be and remain on these premises,
22 including the parking lot, and the public sidewalk immediately adjacent to them."

23 (c) The provisions of ~~this Section~~ subsections (a) and (b) shall not apply:

24 (1) to the interior portion of any private dwelling, habitat, or building. 5

1 (2) to the consumption by persons ~~in the areas herein designated~~ of any duly
2 prescribed and dispensed medication having alcoholic content; or

3 (3) to those persons consuming alcoholic beverages while viewing a parade
4 for which a permit has been granted pursuant to Section 367 of this Code; and

5 (4) ~~Further, this Section shall not be applicable in those prescribed areas and~~
6 during such time for which permission for temporary use or occupancy of public streets and
7 appurtenant areas has been granted by:

8 (1A) The Board of Supervisors pursuant to the provisions of ~~Section 2.70 of the~~
9 ~~Administrative Code~~ Article 6 of the Transportation Code;

10 (2B) The Department of Public Works pursuant to the provisions of Article 5.2
11 of the Public Works Code for a business establishment anywhere in San Francisco that meets
12 the requirements of a ~~full-service~~ restaurant, pursuant to Planning Code Section 790.9192 as
13 interpreted by the Zoning Administrator; or

14 (3C) The Department of Public Works pursuant to the provisions of Article 5.2
15 of the Public Works Code for a business establishment that had a valid tables and chairs
16 permit and California Department of Alcoholic Beverage Control beverage license or permit on
17 the effective date of this ordinance.

18 (bd) Penalty. Any person who shall violate the provisions of this Section shall be
19 guilty of an infraction, the penalty for which shall be a fine of not less than \$25 nor more than
20 \$100.

21 Section 3. The Police Code is hereby amended by amending Section 1298, to read as
22 follows:

23 **SEC. 1298. LIQUOR LICENSE CONDITIONS.**

24 (a) The Chief of Police is authorized, on behalf of the City and County of San
25 Francisco, to request that the California Department of Alcoholic Beverage Control ("ABC")

1 place conditions on a retail licensee or upon any licensee in the exercise of retail privileges,
2 pursuant to California Business and Professions Code Section 23800. In support of the
3 request, the Chief shall forward to the ABC substantial evidence that the requested conditions
4 will mitigate problems either on the premises or in the immediate vicinity of the premises. The
5 Chief is further authorized, on behalf of the City and County of San Francisco, to file with the
6 ABC written objections to or concurrence with the removal or modification of any conditions on
7 an ABC liquor license, pursuant to California Business and Professions Code Section 23803.
8 The Chief shall provide any such recommendations or objections to the ABC in a timely
9 manner in accordance with ABC rules and regulations.

10 (b) The Chief of Police is authorized to draft and propose that the Board of Supervisors
11 approve Resolutions of Public Convenience or Necessity ("PCN") pursuant to California Business and
12 Professions Code Section 23958.4. The Board of Supervisors may, in its discretion, approve the
13 proposed PCN Resolution, amend it, or deny it. The Board shall not approve a Resolution of PCN
14 unless the proposed licensee agrees, in writing, that if the ABC issues an off-sale license to sell
15 alcoholic beverages the license will be subject to the following conditions at all times the license is in
16 use:

17 (1) Sales of beer and malt beverages shall be in quantities of no less than a six-pack;

18 (2) Sales of wine shall be in containers of no less than seven hundred fifty (750)
19 milliliters;

20 (3) Wine coolers, whether made from wine or malt products, shall not be sold in
21 quantities of less than factory packs of four; and

22 (4) Distilled spirits shall be sold in containers of at least two hundred (200)
23 milliliters.

24 (c) The Chief of Police may propose, and the Board of Supervisors may consider, additional
25 reasonable conditions to be imposed on the applicant when considering a Resolution of PCN. The

1 decision of the Chief of Police to propose additional conditions shall be discretionary, and he or she
2 may consider the factors listed in Section 303 of the Planning Code and whether additional conditions
3 will serve the public convenience or necessity. Such conditions shall be set forth in the Resolution of
4 PCN and may include, but shall not be limited to, the following:

5 (1) No wine shall be sold with an alcohol content greater than fifteen (15) percent by
6 volume;

7 (2) There shall be no cups, glasses, or similar receptacles commonly used for
8 drinking alcoholic beverages sold, furnished, or given away at the licensee's premises in quantities less
9 than twenty-four (24) in their original multi-container package, with the exception of food and
10 beverage containers with a corporate logo or business name embossed or stamped on the container
11 when sold in conjunction with food and non-alcoholic beverages;

12 (3) All ice shall be sold at prevailing prices in the area and in quantities of not less
13 than seven (7) pounds per sale, excluding ice sold in conjunction with fountain drinks;

14 (4) Trash receptacles shall be of a design to prevent unauthorized removal of objects
15 from the trash bin; and

16 (5) No alcoholic beverages may be sold for off-premises consumption between the
17 hours of 11 p.m. and 2 a.m.

18 (d) A Resolution of PCN shall specifically set forth that the public convenience or necessity
19 is served only if the conditions set forth in the letter are imposed on the applicant by the ABC.

20 Section 4. The Administrative Code is hereby amended by amending Section 26.28, to
21 read as follows:

22 **SEC. 26.28. DEPARTMENTAL REPORTING REQUIREMENTS.**

23 (a) Beginning 18 months after the effective date of this ordinance, and annually
24 thereafter, the City Attorney and the Department of Public Health shall each submit a report to
25 the Board of Supervisors on the actions it has taken to implement this Chapter. The

1 appropriate committee of the Board of Supervisors shall hold a hearing to review the report
2 and potential amendments to this Chapter, based upon recommendations of the report and
3 public comment.

4 (b) Beginning 12 months after the effective date of this ordinance, and annually
5 thereafter, the Police Department (*"Department"*) shall submit a report to the Board of
6 Supervisors, with a copy to the San Francisco Public Library for public review, that lists all
7 Deemed Approved Off-Sale Alcohol Uses and the conditions and/or penalties placed upon
8 each use, including conditions or penalties imposed through: an administrative hearing under
9 this Chapter; an action of the Board of Supervisors, Planning Commission, Board of *Permit*
10 Appeals, or California *Department of Alcohol Beverage Control ("ABC")*; the inclusion of the
11 use in an Alcohol Restricted Use District; or any other method. The report shall also include the
12 following: (1) all complaints or incidents at or near any Deemed Approved Off-Sale Alcohol Use,
13 including the date, time, location, and nature of the incident, and (2) any referrals or other
14 communications the Department made to ABC about an existing license or proposed license, unless
15 disclosure would compromise a pending criminal investigation. The report shall not include
16 information identifying the complainant or contact information regarding the complainant, or other
17 details the Department decides to exclude from the report.

18 Section 5. Effective Date. This ordinance shall become effective 30 days from the
19 date of passage.

20 Section 6. This section is uncodified. In enacting this Ordinance, the Board intends to
21 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
22 punctuation, charts, diagrams, or any other constituent part of the Police Code that are
23 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
24 Board amendment deletions in accordance with the "Note" that appears under the official title
25 of the legislation.

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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
ANDREA RUIZ-ESQUIDE
Deputy City Attorney

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