

ORDINANCE NO. 01-10 N.S.

AN ORDINANCE OF THE CITY OF RICHMOND ADDING RICHMOND MUNICIPAL CODE CHAPTER 15.04.942 GOVERNING DEEMED APPROVED ALCOHOLIC BEVERAGE SALES AND AMENDING RICHMOND MUNICIPAL CODE SECTION 15.04.910.080(H) TO REQUIRE WINDOWS ON THE STOREFRONT AND INSPECTIONS OF BUSINESSES THAT SELL ALCOHOLIC BEVERAGES

WHEREAS, the City Council finds that it is in the public interest to establish standards governing the administration of establishments that sell alcoholic beverages to the public, and

WHEREAS, the City of Richmond requires all businesses that sell alcoholic beverages to the public to obtain a conditional use permit and comply with all conditions of the permit; and

WHEREAS, prior to the adoption of the conditional use permit requirement, some businesses were legally selling alcoholic beverages to the public; and

WHEREAS, in order to ensure that all businesses selling alcoholic beverages to the public comply with minimal standards to ensure public health, safety and welfare the City Council proposes to add to the Richmond Municipal Code Chapter 15.04.942 governing deemed approved alcoholic beverage sales; and

WHEREAS, in order to provide similar regulations for all establishments selling alcoholic beverages, the City Council proposes to amend Richmond Municipal Code Section 15.04.910(H) to require regular inspections for businesses with alcoholic beverage sales; and

WHEREAS, the City finds that this Ordinance update is Categorically Exempt per CEQA Section 15061(b)(3) of the CEQA Guidelines: Projects where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION 1. Chapter 15.04.942 is hereby added to the Zoning Ordinance of the City of Richmond Municipal Code, to read as follows:

15.04.942 Deemed Approved Alcoholic Beverage Sale Regulations.

15.04.942.010 – Title, purpose, and applicability.

15.04.942.020 – Performance standards for deemed approved status

15.04.942.030 -- Inspections

15.04.942.040 -- Fees

15.04.942.010 - Title, purpose, and applicability.

A. This Chapter shall be known as the Deemed Approved Alcoholic Beverage Sale Regulations.

B. The general purposes of this Chapter are to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare by requiring that on- and off-premises retail alcoholic beverage sales that were legal nonconforming uses immediately prior to the effective date of this Chapter comply with the deemed approved performance standards of this Chapter to achieve the following objectives:

1. To protect residential, commercial, industrial, and civic areas and minimize the adverse impacts of nonconforming and incompatible uses;
2. To provide opportunities for alcoholic beverage sale activities to operate in a mutually beneficial relationship to each other and to other commercial and civic services;
3. To provide mechanisms to address problems often associated with the public consumption of alcoholic beverages, including but not limited to litter, loitering, graffiti, unruly behavior and escalated noise levels;
4. To provide that alcoholic beverage sale commercial activities are not the source of undue public nuisances in the community;
5. To provide for properly maintained alcoholic beverage sale establishments so that negative impacts generated by these activities are not harmful to the surrounding environment in any way;
6. To monitor that deemed approved activities do not substantially change in mode or character of operation.

C. The provisions of this Chapter are to be interpreted in conjunction with the provisions of Richmond Municipal Code Section 15.04.910.080(H) and shall apply, to the extent permissible under other laws, to all legal nonconforming on- and off-premises retail alcoholic beverage sales within the City, except eating establishments with alcoholic beverage sales as defined at Section 15.04.020.63a of this Code. Whenever any provision of this Chapter and any other provision of law, whether set forth in this Code, or in any other law, ordinance, or resolution of any kind, imposes overlapping or contradictory regulations, or contain restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control.

15.04.942.020 - Performance standards for deemed approved status.

A. The retail sale of alcoholic beverages shall retain its deemed approved status only if it conforms with all of the following deemed approved performance standards:

1. The establishment does not change its type of retail on-sale or off-sale liquor license granted by the State Department of Alcoholic Beverage Control (i.e., beer and wine to distilled liquor).
2. The business operation of the establishment is not abandoned, suspended or discontinued (including the case where retail liquor license for such operation is suspended) for a period of one hundred twenty (120) days or more; provided that, this provision shall not apply when the business operation is suspended or discontinued because the building or structure in which the establishment is operating is:

- a. Destroyed or damaged due to causes beyond the owner or operator of the establishment's control (i.e., fire, flood, act of God, etc.) and which prevents the establishment from operating, or
 - b. Being remodeled, enlarged or improved which prevents the establishment from operating, provided that building and other appropriate City permits have been obtained within one hundred twenty (120) days after the business operation is discontinued. In the event that such building and other City permits expire or are revoked, then such establishment shall be required to obtain a conditional use permit in order to continue or reestablish its operation.
3. The square footage of the floor area within the establishment devoted to the display or sale of alcoholic beverages is not increased by twenty-five (25) percent or more.
 4. The retail liquor license is not transferred to another location within the City of Richmond or the establishment, either in whole or in part, is moved or relocated to another location within the City of Richmond.
 5. The business operator is not found by an administrative hearing officer or court of competent jurisdiction to have violated any ordinance of this City, or any federal or state law or regulation.
 6. The business operation does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests. In evaluating whether nuisance activities are occurring on or near the premises of an establishment, the Chief of Police, Planning Commission or City Council shall take into consideration whether the owner of the establishment, or the owner's agent, has taken reasonable steps to abate the nuisance, including contacting and cooperating with the Richmond Police Department, provided that:
 - a. Neither the owner of the establishment nor the owner's agent shall be required to engage in abatement activities that would endanger the safety of the owner or the owner's agent, and
 - b. The fact that the owner of the establishment or the owner's agent calls for Richmond Police Department assistance shall not by itself constitute a basis for finding that a nuisance exists on the premises of the establishment.

B. As stated at Richmond Municipal Code Section 15.04.910.080(H)(3) – (5), deemed approved status may be modified or revoked pursuant to Richmond Municipal Code Chapter 15.04.990 upon a finding by the Planning Commission, or by the City Council on appeal, that the subject business is not operating in accordance with all performance standards set forth in Paragraph A.

15.04.942.030 – Inspections

In order to retain deemed-approved status, all businesses licensed to engage in on- and off-premises retail alcoholic beverage sales within the City must comply with the inspection requirements set forth in Section 15.04.910.080(H) of this Code.

15.04.942.040 – Fees

Fees for the review, notification, appeal, inspection and reinspection of deemed approved activities, will be in accordance with a fee schedule established by the City Council.

A business owner who violates the deemed approved provisions of this Chapter shall be liable for costs, expenses, and disbursements paid or incurred by the City or any of its contractors in the correction and abatement of the violation. Reinspection fees to ascertain compliance with previously noticed or cited violations may be charged against the owner of the deemed approved activity in an amount set by the City Council. The City Manager or his or her designee must mail the property owner or business owner of the affected premises a written notice setting forth the itemized cost of chargeable services and requesting payment of those costs. If the bill is not paid in the time stated in the notice, the charges will be referred to the City Finance Department, or if the charges are against the property owner, the charges will be placed as a lien against the property in accordance with Chapters 1.04 and 2.62 of this Code.

SECTION 2. Richmond Municipal Code Section 15.04.910.080(H) is hereby amended with the addition of an introductory paragraph to read as follows:

H. Alcoholic Beverage Retail Establishments (On-Sale and Off-Sale).

All businesses that engage in retail alcoholic beverage sales shall be subject to inspection by City staff any time the Chief of Police, or his or her designee, finds that criminal or nuisance activities are occurring on or near the premises. In addition, to ensure compliance with performance standards and/or conditions of approval, all businesses that engage in retail alcoholic beverage sales (except eating establishments with alcoholic beverage sales as defined at Section 15.04.020.63a of this Code) shall be subject to inspection once every three calendar years. If a business is not compliant with all performance standards and/or conditions of approval upon first inspection, it shall be inspected a second time on a date determined by the inspection team, no later than 60 days from first inspection. If a business is not fully compliant upon second inspection, it may be inspected a third time on a date determined by the inspection team, no later than 30 days from the date of second inspection, or, if the continuing non-compliance poses imminent danger to the public health, safety, or welfare the inspection team may issue a notice of violation and take such other actions as are necessary to remedy the violation. If a business is found to be in violation of any performance standards and/or conditions of approval after a maximum of three inspections, Planning staff shall schedule a hearing before the Planning Commission in accordance with Section 15.04.990.030.B to determine whether the conditional use permit or deemed approved status should be revoked or modified. The business owner shall be invoiced for the costs of the inspection and any necessary reinspection and enforcement costs in accordance with the City's adopted fee schedule.

SECTION 3. Richmond Municipal Code Section 15.04.910.080(H)(8) is hereby amended with the addition of subparagraphs (a) and (g) to read as follows, **with all existing subparagraphs to be relettered as necessary:**

a. Inspections. Businesses that engage in retail alcoholic beverage sales shall be subject to inspection by City staff any time the Chief of Police, or his or her designee, finds that criminal or nuisance activities are occurring on or near the premises. In addition, to ensure compliance with performance standards and/or conditions of approval, all businesses that engage in retail alcoholic beverage sales (except eating establishments with alcoholic beverage sales as defined at Section 15.04.020.63a of this Code) shall be subject to inspection once every three calendar years. The business owner shall be invoiced for the costs of the inspection and any necessary reinspection and enforcement costs in accordance with the City's adopted fee schedule.

g. Windows. On the primary frontage of a business engaged in retail alcoholic beverage sales there must be a minimum of 240 square feet of transparent fenestration in the area 30 inches above grade to 84 inches above grade that is to remain unobstructed during business hours.

SECTION 4. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 5. Effective Date.

This Ordinance becomes effective 30 days after its final passage and adoption.

First read at a meeting of the Council of the City of Richmond held on December 15, 2009, and finally passed and adopted at a meeting held January 5, 2010, by the following vote:

AYES: Councilmembers Bates, Butt, Rogers, Viramontes, and Mayor McLaughlin

NOES: None

ABSTENTIONS: None

ABSENT: Vice Mayor Lopez and Councilmember Ritterman

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

I certify that the foregoing is a true copy of Ordinance No. 01-10 N.S., finally passed and adopted by the Council of the City of Richmond at a regular meeting on January 5, 2010, and published in accordance with law.