

ORDINANCE NO. 780

AN ORDINANCE OF THE CITY OF ROHNERT PARK ADDING A CHAPTER 8.34, "USE PERMITS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO THE ROHNERT PARK MUNICIPAL CODE TO ADOPT A USE PERMIT REQUIREMENT FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS

WHEREAS, the City of Rohnert Park ("City") has experienced a high volume of calls to its Public Safety Department related to the sale of alcoholic beverages at businesses throughout the City;

WHEREAS, the majority of the incidents to which the Public Safety Department responds constitute nuisances in accordance with Chapter 1.24 of the Rohnert Park Municipal Code;

WHEREAS, these nuisances include, but are not limited to, public inebriation, fights and other violence, driving under the influence of alcohol, littering, loitering, noise, and vandalism; and

WHEREAS, the City wishes to reduce the number of nuisances to which the Public Safety Department responds;

WHEREAS, the City wishes to require each owner or licensee of an alcohol establishment to secure a use permit to lawfully engage in the sale of alcoholic beverages within the City; and

WHEREAS, the use permit will require the business owner to comply with operational standards and training requirements as conditions of the permit; and

WHEREAS, an annual permit fee will be imposed on all alcoholic beverage establishments in order to provide the revenue necessary to fund the costs incurred by the Public Safety Department to monitor compliance and enforce the conditions of the permit and implement programs that promote responsible policies and practices of businesses engaged in the sale of alcoholic beverages; and

WHEREAS, the use permit will establish standards of operation for licensed alcohol establishments in order to promote successful business practices compatible with healthy economic growth, community safety, and quality of life of Rohnert Park residents; and

WHEREAS, based upon studies conducted by the Public Safety Department, the City Council finds that the operation of businesses selling alcoholic beverages creates environments conducive to excessive consumption of alcohol and other nuisances; and

WHEREAS, the City Council finds that these behaviors often impact the health, safety, and general welfare in surrounding areas including residential neighborhoods, the success of the establishment itself, and surrounding businesses; and

WHEREAS, the City Council finds that imposing conditions and standards of operation in a use permit will mitigate nuisances and promote a healthier, more successful business environment;

NOW, THEREFORE, the City Council of the City of Rohnert Park does ordain as follows:

SECTION 1. A new Chapter 8.34, "Use Permits for Alcoholic Beverage Establishments," is added to the Rohnert Park Municipal Code to read:

“Section 8.34.010 Definitions.

Alcoholic beverage means any beverage fit for consumption which contains one half of one percent or more of alcohol by volume.

Alcoholic Beverage Control (ABC) means the California Department of Alcoholic Beverage Control.

Alcoholic beverage establishment means any off-sale or on-sale alcoholic beverage establishment.

Alcoholic beverage establishment, off-sale means any business where alcoholic beverages are sold for consumption off of the establishment's premises including, but not limited to, any business that has obtained or intends to obtain an ABC License type 20 or 21.

Alcoholic beverage establishment, on-sale means any business where alcoholic beverages are sold or served for consumption on the premises and which is applying for or has obtained an ABC license type 40, 41, 42, 47, 48, 51, 52, 61, 63 and/or 75.

City Manager means the City Manager or his or her designee.

Deemed approved establishment means any licensed, legal nonconforming alcoholic beverage establishment in existence and lawfully operating in the city immediately prior to the effective date of this chapter.

Director of Administrative Services means the Director of Administrative Services or his or her designee.

Director of Public Safety means the Director of Public Safety or his or her designee.

Enforcement Officer means the City of Rohnert Park Director of Public Safety or his or her designee.

Licensee means any person or business licensed by the State of California Department of Alcoholic Beverage Control actively conducting retail alcohol sales. In any case where a person or business maintains duplicate licenses or catering licenses at a location, such person or business shall be deemed a single "Licensee."

Section 8.34.020. Administration.

The Director of Public Safety is responsible for issuing the use permits required by this ordinance, and for carrying out such other responsibilities contained in this chapter.

The Director of Public Safety is also responsible for monitoring compliance by the owners, operators and employees of an alcoholic beverage establishment with conditions imposed on any use permit issued pursuant to the provisions of this ordinance, including deemed approved uses, and for initiating appropriate enforcement action in the event of non compliance.

The Director of Administrative Services is responsible for collecting all annual permit fees imposed pursuant to the provisions of this ordinance.

Section 8.34.030. Use permit required for new or modified alcoholic beverage establishments.

Except as otherwise provided in this chapter, no person shall establish a new on-sale or off-sale licensed alcoholic beverage establishment or substantially modify an existing alcoholic beverage establishment without first obtaining a use permit in the manner provided by this chapter.

Section 8.34.040. Application for Use Permit--Form and Content.

An application for a use permit required by this chapter must be in the form prescribed by the Director of Public Safety and shall contain all of the following information:

- A. The address of the establishment selling alcoholic beverages.
- B. The type of ABC license the applicant is seeking for the alcoholic beverage establishment.
- C. The true and complete name and address of each lender or share holder with a five percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- D. For off-sale establishments, a verification that the establishment is not located within 1,000 feet of any existing schools, places of worship, hospitals, parks, playgrounds or other alcoholic beverage establishments of 11,000 square feet or less in size.
- E. For on-sale establishments with ABC license types 40, 42 and 48 (bars, nightclubs), a verification that the establishment is not located within 1,000 feet of any existing schools, places of worship, hospitals, parks, playgrounds or other alcoholic beverage establishments with ABC license type 40, 42 or 48.

Section 8.34.050. Application for use permit--Application fees.

An application for a use permit required by this article shall be accompanied by an application fee in an amount established by resolution of the city council, based on the estimated costs of reviewing and acting on such applications and compliance monitoring and public education.

Section 8.34.060. Action on Application for a Use Permit.

The Director of Public Safety will consider each complete application for a use permit required by this ordinance within 30 business days of submittal, and will approve issuance of the permit upon making the following findings.

- A. The proposed alcoholic beverage establishment is located in a zoning district in which the establishment is a permitted use;
- B. The proposed establishment will not contribute to an undue concentration of alcohol establishments in the area as defined by Business and Professions Code section 23958.4(a) or is an establishment for whom the City has made a finding of public convenience or necessity;
- C. The proposed off-sale establishment is not located within 1,000 feet of any existing schools, places of worship, hospitals, parks, playgrounds or other alcoholic beverage establishments of 11,000 square feet or less in size.
- D. The proposed on-sale establishment with either ABC license type 40, 42 or 48 (bars, nightclubs), a verification that the establishment is not located within 1,000 feet of any existing schools, places of worship, hospitals, parks, playgrounds or other alcoholic beverage establishment with ABC license type 40, 42 or 48.
- E. The proposed establishment is not located in a high-crime area as defined in Business and Professions Code section 23958.5(a), or where a disproportionate number of police service calls occur.

Section 8.34.070. Conditions of Approval.

When approving an application for a use permit for an alcoholic beverage establishment, the Director of Public Safety shall issue the permit subject to the operational standards and training requirements set forth in sections 8.34.130 and 8.34.140 of this chapter.

When approving an application for a use permit for an alcoholic beverage establishment, the Planning Commission may also impose additional conditions that it determines to be necessary or desirable to insure that the particular use authorized by the permit will be established, operated, and maintained in a way that will prevent nuisances, including but not limited to, premises design conditions that:

- A. Require the exterior areas of the premises and adjoining parking lots to be illuminated in a manner that provides lighting sufficient to illuminate and make easily discernable the appearance of all persons on or about the premises while not disturbing surrounding residential and commercial areas;
- B. Require litter and trash receptacles that are placed at accessible locations both within and outside the establishment and that are emptied on a daily basis;
- C. Prohibit fixtures or furnishings that encourage loitering and nuisance behavior;
- D. Reduce opportunities for patrons to congregate and obstruct neighboring properties and public rights-of-way;
- E. Otherwise maximize opportunities for surveillance and control of the premises and areas around the perimeter of the premises, including but not limited to cameras or security guards; and
- F. Any other conditions deemed appropriate by the Planning Commission.

Section 8.34.080. Appeals from a determination on an application for use permit.

Any applicant or other person aggrieved by a decision of the Director of Public Safety on an application for a use permit required by this article, may appeal the decision of the Director of Public Safety to the City Manager within the time and in the manner required by section 8.34.230 of this Chapter. The decision of the City Manager shall be final.

Section 8.34.090. Posting of Conditions of Approval.

Every owner of an alcoholic beverage establishment issued a use permit pursuant to the provisions of this Chapter shall post a copy of all operational standards, training requirements and any special conditions of the permit in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

Section 8.34.100. Existing uses deemed approved.

Except as otherwise provided in this chapter, any alcoholic beverage establishment lawfully operating prior to the effective date of this ordinance pursuant to an ABC license that authorizes the retail sale of alcoholic beverages for on-site or off-site consumption shall be deemed approved and may continue to lawfully operate without a use permit provided the operation is conducted in compliance with the standards and training requirements set forth in this ordinance and has paid the annual permit fee required by section 8.34.150.

The continued operation of a deemed approved alcoholic beverage establishment shall require approval of a new use permit in the manner provided by this Chapter upon the occurrence of any of the following:

- A. The establishment changes its type of retail liquor license with the Department of Alcohol Beverage Control;
- B. There is a substantial modification to the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" shall include, but not be limited to the following:
 - 1. The off-sale alcoholic beverage establishment increases the floor area or shelf space principally devoted to alcohol sales by 25 percent or more; or
 - 2. The on-sale alcoholic beverage establishment increases the floor area principally devoted to the alcohol sales by more than 250 square feet; or
 - 3. The alcoholic beverage establishment proposes to reinstate alcohol sales after the ABC license has been either revoked or suspended for a period greater than 30 days by the ABC; or
 - 4. The alcoholic beverage establishment proposes to reinstate alcohol sales after a cessation of use for a period of six months or more.

Section 8.34.110. Notification to owners.

Within 60 days following the effective date of this Chapter, the Director of Public Safety shall:

A. Notify the owner of each deemed approved alcoholic beverage establishment within the City of the establishment's deemed approved status, authorizing the establishment to lawfully continue its operation in the manner required by this chapter;

B. Provide the owner of the establishment with a copy of the provisions of this chapter and call the owner's attention to the requirement that the establishment be operated in accordance with the operational standards set forth in section 8.34.130; and

C. Provide the owner of the establishment with a copy of the permit fees adopted by the City Council in accordance with section 8.34.150 and advise the owner of the amount and due date of the establishment's annual permit fee.

Section 8.34.120. Posting of operational standards by deemed approved establishments.

Every owner of a deemed approved alcoholic beverage establishment shall post a copy of all of the operational standards set forth in this Chapter in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

Section 8.34.130. Operational standards for all alcoholic beverage establishments.

All new and existing alcoholic beverage establishments shall be operated in conformance with the following operational standards:

A. Compliance with the state's Alcohol Beverage Control Act. All alcoholic beverage establishments shall be operated in strict compliance with the state's Alcohol Beverage Control Act, together with the conditions of any license issued by ABC to the establishment pursuant to that Act.

B. Performance Standards for Outlets. All alcoholic beverage establishments shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance, as defined in Chapter 1.24 of this Code, and adhere to the following performance standards in parking areas, sidewalks, alleys and areas surrounding the alcoholic beverage establishments and adjacent properties under the control of the subject alcoholic beverage establishment. "Reasonable steps" shall include calling the police in a timely manner, preventive design features, and requesting those engaging in such activities to cease those activities, unless personal safety would be threatened in making that request. Failure to correct these conditions may result in revocation of the "deemed approved" status, thereby requiring approval of a new use permit in the manner provided by this Chapter.

1. It does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area.
2. It does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area.
3. It does not result in repeated nuisance activities within the premises or in close proximity to the premises, including but not limited to disturbance of the peace,

illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sexual harassment or sexual battery, 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 sexual conduct in public, or police detentions and arrests.

4. It does not result in violations to any applicable provision of any other city, county, state, or federal regulation, ordinance, or statute including but not limited to sale or service of alcohol to minors, service of intoxicated patrons, failure to adhere to state ABC license conditions or local conditional use permit restrictions.
5. Its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding area.
6. A copy of the performance standards shall be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review.

Section 8.34.140. Training Requirements for all alcoholic beverage establishments.

A. Training. All sellers/servers of alcoholic beverages shall complete an approved course in "Responsible Beverage Sales" (RBS) within sixty (60) days of hire for employees hired after the passage of this ordinance or within 6 months of the passage of this ordinance for existing employees.

B. Certified programs. To satisfy the requirements of this section, a certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service (CCC/RBS) or other certifying/licensing body designated by the State of California.

Section 8.34.150. Annual permit fees.

The City Council shall establish by resolution an annual use permit fee that shall be imposed on each alcoholic beverage establishment issued a use permit pursuant to the provisions of this Chapter, including any new or modified establishment or deemed approved establishment issued a permit pursuant to this Chapter. The annual use permit fee shall be assessed for each alcoholic beverage establishment on a sliding scale based on:

- A. The hours of operation that alcohol is sold at the establishment;
- B. The volume of alcohol sales at the establishment;
- C. The number of police calls for service at the establishment;
- D. The estimated annual costs of the police services necessary to monitor and enforce the operational standards and other use permit conditions and requirements for all establishments within that license category; and
- E. The estimated staff costs to bill and collect the annual permit fee.

Section 8.34.160. Billing and Payment.

All annual permit fees imposed on an alcoholic beverage establishment operating under a use permit issued in the manner provided for by this ordinance including "deemed approved" establishments shall be billed by the administrative services department on or before the 1st day of January of each year. The fee is due and payable immediately upon receipt, and will be delinquent if not paid within 30 days of the bill's mailing.

Section 8.34.170. Administrative review of fee.

Licensee may to challenge the amount of the annual use permit fee in accordance with Section 3.32.060 of this Code.

Section 8.34.180. Establishment of alcohol permit fee account.

- A. The City shall establish an "Alcohol Permit Fee Account" for the collection of the fees described in this Chapter.
- B. Funds from the "Alcohol Permit Fee Account" shall be used only to recover the cost of the services including education, inspections, enforcement operations and administrative hearings, related to the monitoring and enforcement of the performance standards, conditions of operation and regulations established for licensed alcohol establishments in this Chapter.

Section 8.34.190. Report of expenditure of fees to be collected.

- A. Not later than the last meeting of October in each calendar year, the Enforcement Officer shall submit to the City Council a report on the expenditures of the total of annual alcohol permit fees collected.
- B. The report shall set forth such matters as:
 - 1. The prioritization of problems regarding enforcement of the performance standards, conditions and regulations as set forth in this ordinance related to the operation of licensed alcohol establishments in the City of Rohnert Park.
 - 2. Methods of mitigating such problems, through prevention, education and enforcement of the performance standards, conditions and regulations.
 - 3. The specific allocation of the fees to be collected to activities described in the report.

Section 8.34.200. Violations.

- A. It shall be unlawful for any person to operate a new or modified alcoholic beverage establishment:
 - 1. Without a valid use permit issued in the manner provided by this Chapter; or

2. In violation of any requirements and conditions of any applicable use permit issued pursuant to this Chapter, including, but not limited to, any operational standards and training requirements.

B. It shall be unlawful for any person to operate a deemed approved alcoholic establishment in violation of the operational standards set forth in this ordinance and incorporated into a permit issued to the establishment pursuant to this Chapter.

Section 8.34.210. Penalties.

A person shall be subject to the penalties set forth in Chapter 1.16 of this Code if:

A. The person operates a new or modified alcoholic beverage establishment without a use permit required by this ordinance.

B. The person has been issued a use permit for an alcoholic beverage establishment in the manner provided by this ordinance, and causes or permits the establishment to be operated in violation of the requirements or conditions of the use permit.

Section 8.34.220. Inspections.

All alcoholic beverage establishments within the city shall be regularly inspected by the Public Safety Department to determine whether the establishments are being operated in compliance with the provisions of this ordinance.

Section 8.34.230. Preliminary notice of violation and hearing.

A. Preliminary notice. Where the Public Safety Department determines that an alcoholic beverage establishment is operating in violation of the provisions of this Chapter, including, but not limited to, any of the requirements and conditions of the use permit issued to such establishment in the manner provided by this ordinance, the department will issue a notice to the permittee that describes the nature of the violation, the corrective action to be taken, and the time within the corrective action must be completed.

B. Notice of hearing. If the licensee has not taken corrective action with the time specified, the Public Safety Director shall provide the licensee with notice of a hearing. The notice shall specify the facts which constitute the violation, specify the time, date, and place of the hearing, and state that the licensee may be represented by counsel or other interested persons. Said notice shall be served at least 15 days prior to the hearing by mailing by certified mail, postage prepaid, addressed to the licensee's residence as indicated in the most recent use permit application on file.

C. Hearing. At the hearing, the licensee, his or her counsel, and any other interested person(s) shall have the right to present evidence as to the facts upon which the Public Safety Director proposes to revoke the use permit.

D. Notice of decision. If after said hearing, the Public Safety Director finds that any of the grounds for revocation exist, he or she shall within 10 days after the hearing serve by certified mail, postage prepaid, a notice of decision upon the licensee and all interested persons participating in the hearing. Said notice shall specify the

findings of the Public Safety Director, the ground or grounds for his decision, and shall indicate the appeal procedure.

E. Effective date of decision. The decision of the Public Safety Director shall be final and binding on all interested parties ten days after the notice of decision is mailed, unless an appeal is filed.

F. Appeal. The decision of the Public Safety Director to revoke a use permit may be appealed in writing to the City Manager within 10 days of mailing of the notice of decision. The City Manager shall hear the appeal within 30 days of receipt of the written appeal. At the hearing, the appellant may present evidence in support of the contentions stated in the notice of appeal. Any interested person(s), including the Public Safety Director, may be allowed to participate in the hearing and present evidence in support of the decision of the Public Safety Director. The City Manager shall render a written decision, including the grounds upon which the revocation is either upheld or overturned, within 15 days of the date of the appeal hearing. A copy of the City Manager's decision shall be served by certified mail, postage prepaid, upon the appellant and all parties to the hearing requesting same. The decision of the City Manager shall be final.”

SECTION 2: Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more of the sections subsections, sentences, clauses or phrases may be declared unconstitutional.

SECTION 3: Effective Date. This ordinance shall be in full force and effective thirty (30) days from and after its adoption, and published and posted as required by law.

This ordinance was introduced on the 24th day of April, 2007 and DULY AND REGULARLY ADOPTED this 8th day of May, 2007 by the following roll call vote:

AYES: FOUR (4) Council Members Mackenzie, Smith, Stafford, and Mayor Vidak-Martinez

NOES: ONE (1) Council Member Breeze

ABSENT: NONE (0)

ABSTAIN: NONE (0)

ATTEST: CITY OF ROHNERT PARK

/s/ City Clerk Judy Hauff

/s/ Mayor Vicki Vidak-Martinez

APPROVED AS TO FORM:

/s/ Assistant City Attorney Gabrielle P. Whelan