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On-site Sale of Alcohol, Entertainment, and Similar Uses.

Chapter 18.43 - Businesses offering the on-site sale of alcohol, entertainment, and similar uses.

18.43.010 Purpose.

The purpose of this Chapter is to establish a set of regulations and operational standards for businesses offering the on-site sale of alcohol, entertainment, and similar uses within the City of Whittier.

18.43. 020 Conditional use permit required.

A. Any existing, expanded or proposed business within the City of Whittier with the operational characteristics described within Section 18.43.010 (Purpose) shall be required to obtain a Conditional Use Permit (or modified Conditional Use Permit), regardless if the alcohol sales or service for on-site consumption are considered a primary or accessory use, and comply with the provisions of this Chapter. This requirement shall also apply to any business located within any Specific Plan within the City. However, a Conditional Use Permit shall not be required for any existing, expanded or proposed business within the City of Whittier that provides non-amplified background music that is performed by a maximum of four persons with no more than four musical instruments at anytime.

B. Any existing, legal non-conforming, business which is operating contrary to the provisions of this Chapter shall be subject to the amortization period outlined in Chapter 18.62 (Non-conforming Uses, Structures and Sites) of the Whittier Zoning Code upon the adoption of this ordinance.

18.43.030 Operational standards.

A. Operational requirements. All new businesses offering or selling alcoholic beverages in conjunction with any on-site dancing, live entertainment, musical performances, amplified music, billiard/pool hall, arcade, internet café, smoking lounge, restaurant, bar, banquet hall, club, or similar use (as determined by the Director of Community Development) shall comply with the following provisions.

1. There shall be no alcoholic beverage or smoking advertisement(s) located within six (6) feet from within the interior of a business window. Furthermore, no alcoholic beverage or smoking advertisement(s) shall be affixed to the outside of a business window or onto the building it is located in.

2. Both the business and property owner shall prohibit, at all times, the use of any type of third party promoter to advertise any on-site

events/activities or to conduct, manage, direct or otherwise hold events/activities at the on-site business.

3. There shall be no ~~door charge, cover charge, or any other form of admission charge, including~~ minimum ~~drink sales~~ alcoholic beverage drink purchase requirements for any patrons of the on-site business.

4. No exterior placement of any "happy hour" advertisement promotion for reduced price alcoholic beverages shall be permitted at any time.

5. All exterior doors and windows of any establishment selling alcoholic beverages in conjunction with any form of on-site live entertainment or amplified music shall be closed, except to allow for the ingress or egress of patrons. All exterior doors and windows shall have an adequate acoustic barrier, such as weather striping, or other sound attenuation improvements such as double doors with a foyer. A, ~~and shall no consist solely of a~~ scree

6. ~~Interior~~ Any interior and/or exterior noise stemming from the establishment shall comply with Chapter 8.32 (Noise Control) of the Whittier Municipal Code.

7. Food and/or alcoholic beverages shall not be served in any queuing or waiting areas.

8. If the interior queuing or waiting area is insufficient to fully accommodate waiting customers, a maximum of 25 patrons shall be permitted to queue outside the business. Outside queuing space shall be situated so as not to obstruct the public right-of-way, interfere with any outside eating areas, or impede access to adjacent business establishments. Patrons in the outside queuing area shall not be permitted to obtain or consume food or beverages from the business until they enter the establishment and are seated.

9. Whenever the premises or any portion thereof is open to the public and operated as a restaurant, food from the regular menu shall be made available to patrons up to at least one hour before closing.

10. For restaurant uses, the quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall, at all times, maintain records which reflect separately the gross sale of food and the gross sale of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the

City upon request by the Director of Community Development, Police Chief or their designees.

11. The exterior of the business, including but not limited to: the grounds, all signage, accessory buildings, structures, windows, landscaping and parking areas, shall be maintained free of litter and graffiti at all times. The owner or operator shall be responsible for daily maintenance of the exterior. The owner or operator shall also provide for the daily removal of trash, litter and debris (including any vomit, urine and excrement) from the premises and on all abutting sidewalks and parking lots within a twenty (20) foot radius around the exterior of business premises. Graffiti shall be removed within ~~forty-eight (48)~~ seventy-two (72) hours of discovery.

12. The business shall comply with all laws, regulations and conditions prescribed by the Department of Alcoholic Beverage Control pertaining to the sale and/or on-site consumption of alcoholic beverages.

13. All bona-fide eating establishments that offer the on-site sale and consumption of alcoholic beverages shall comply with the following provisions:

a. Only employees of the establishment shall serve and distribute alcoholic beverages to patrons;

b. The premises shall possess a supply of food and goods adequate to make substantial food sales and comply with Section 23038 of the Business and Professions Code. All food must be maintained in a sanitary condition and comply with all Health Department regulations. Failure to serve food (for any reason) shall result in the automatic suspension of all alcoholic beverage sales that are served for on-site consumption until food sales are resumed;

c. ~~The sale of alcoholic beverages independent of food sales is prohibited~~ Employees shall not actively solicit ready-to-serve alcoholic drinks to patrons. A full service food menu with an operable kitchen shall be made available to shall be available to customers to order food from during all hours of operation, up to at least one hour prior to closing;

d. The business operator shall regularly make their employees aware of the issue of over-serving/selling alcoholic beverages to patrons;

e. Alcoholic beverages shall not be served or sold to anyone who appears intoxicated or under the influence of any drug, chemical or substance to enter or remain within a business establishment per Section 25602(a) of the Business and Professions Code;

f. Minors are forbidden from possessing, consuming, serving or selling alcoholic beverages;

g. Sales and service of alcoholic beverages shall be permitted during the regular hours of operation, but shall cease at least one hour prior to closing (if the business closes after 11:00 p.m.), at which time all on-site music (including live music) and live entertainment shall be discontinued and an announcement made that the business is closing. The sale or service of alcoholic beverages in a pitcher or similar container shall be prohibited as a "last call" order one hour prior to closing.

14. No individuals, other than employees, managers, independent contractors or agents of the business owner/property owner shall be present on the premises of the business after the requite closing time for the business.

15. There shall be an on-site manager, ~~twenty-five~~ twenty-one years of age or older, who will be responsible for the management of all alcoholic beverages sold, served and consumed on-site by patrons during all business hours. The general manager and any newly/subsequently-hired managers of the licensed premises shall possess a Manager's ~~Permit~~ Training Certificate from the State of California Department of Alcoholic Beverage Control as deemed necessary by the Whittier Chief of Police (or his designee). The Chief of Police (or his designee) or Director of Community Development, upon request, shall be provided with a copy of said Manager's Permit, if deemed necessary, including the name, residential address, and related work experience of the intended manager prior to the manager assuming managerial responsibilities.

16. The sorting of empty bottles and other recyclable products shall be limited to the hours between 8:00 a.m. to 9:00 p.m., daily.

18.43.040 Changes in operational characteristics.

A. Changes and/or modifications. Any significant change and/or modification in the operational characteristics of a business including, but not limited to, the expansion of indoor or outdoor seating areas or public assembly space, the addition of other conditionally permitted uses within the business, and/or the expansion of an existing conditional use, shall require a new

Conditional Use Permit or an amendment to an existing Conditional Use Permit in accordance with Section 18.04.120 of the Whittier Zoning Code.

B. Permit(s) Required. The applicant shall obtain all required City permits prior to implementing any approved change(s) in operational characteristics.

18.43.050 Outdoor patio and patio seating.

A. Approval. Prior to establishing any outdoor patio and/or patio seating area, the approval authority shall make the following findings:

1. The proposed outdoor patio and/or patio seating area is accessory to the establishment;

2. The establishment, maintenance or operation of the accessory outdoor patio and/or patio seating area will not be detrimental to the health, safety, peace, comfort and general welfare of persons in the neighborhood or injurious to property or improvements in the area;

3. The proposed accessory outdoor patio and/or patio seating area will not eliminate any required on-site parking, interfere with public easements, and will comply with all applicable regulations of the Whittier Municipal Code.

B. Conditions of Approval. Unless conditioned otherwise by the approval authority, all outdoor dining and patio seating areas shall be subject to the following requirements:

1. That the outdoor patio and/or patio seating area shall be subject to all the existing hours of operation, operational characteristics and conditions of approval for any valid entitlement applicable to the establishment, except as otherwise set forth herein.

2. No amplified music or amplified entertainment is permitted outdoors~~, except wherein normal conversation is not impeded~~; no music or entertainment shall be permitted on a patio after 10:00 p.m. Sunday through Thursday, and after 11:00 p.m. Friday and Saturday.

3. All doors and windows leading to the outdoor patio and/or patio seating area shall remain closed (except for employee/patron ingress and egress) after 10:00 p.m. Sunday through Thursday, and after 11:00 p.m. Friday and Saturday, while any approved indoor amplified music or live entertainment is occurring.

4. Roof coverings for the outdoor patio and/or patio seating area shall not have the effect of creating a permanent enclosure. Fences, walls and similar barriers around the outdoor patio area shall only serve to define the outdoor patio area. The maximum height shall be determined by the approval authority.

5. All outdoor patios and/or patio seating areas in which alcoholic beverages are served shall be enclosed by a sufficient barrier, as required by the Department of Alcohol and Beverage Control. However, the City's applicable approval authority may require additional design features beyond the minimum requirements set by the Department of Alcohol and Beverage Control for any proposed barrier, including but not limited to: the type of materials, color, height, etc. Exiting only shall be permitted from the outdoor patio and/or patio seating area, as required by the Building Code.

6. Such additional conditions that the approval authority deems appropriate to mitigate potential adverse impacts the outdoor patio and/or patio seating area may cause to the adjacent properties and surrounding community.

7. A Noise Analysis/Study prepared by a qualified acoustical engineer shall be submitted to the City for review and approval. The noise analysis/study shall include any/all mitigation measures necessary to reduce sound and vibration levels in order to comply with the City's Noise Ordinance.

D. Denial. An application to add an outdoor dining or patio area may be denied should the approval authority determine there is a potential for an adverse impact on the public's health, safety or welfare. Likewise, an application may be revoked or modified by the approval authority upon a finding of failure to comply with the conditions approval set forth in this section or any other applicable conditions or laws pertaining to its use and operation.

E. Sidewalk Encroachment. In the event that a proposed outdoor dining or patio seating area is to be located partially or wholly on a public sidewalk or within any portion of the right-of-way, the application shall not become effective until the applicant has obtained a valid Encroachment License/Permit from the Director of Public Works, who may set forth conditions of approval in conjunction with the issuance of the license/permit.

18.43.060 Security.

A. The following security procedures and precautions shall be followed for all businesses selling or serving alcoholic beverages for on-site consumption:

1. Reasonable steps shall be taken to discourage and correct objectionable conditions that constitute a nuisance in any parking lot, sidewalk, alley and those areas immediately surrounding the establishment during business hours and within one-half hour after the close business. Reasonable steps shall include calling the Whittier Police Department in a timely manner; preventative design features; and requesting those engaging in such activities to cease the activity, unless personal safety would be threatened in making that request.

2. Except as expressly provided herein or through adopted conditions of approval, any business that sells or serves alcoholic beverages after 11:00 pm. shall employ or otherwise provide trained, private, security personnel or officers to patrol the premises of such business establishment until closing in the manner and number required in this Section based on the following considerations:

a. The number of hours and the time in which trained, private, security officers shall be provided by the business shall be set by the approval authority based on the recommendations of the Whittier Chief of Police or his designee, after considering the following factors:

i. The type of Alcoholic Beverage Control license approved or proposed for the business;

ii. The gross square footage of the business premises;

iii. The occupancy approved by the Building Division and Fire Department, as well as observed occupancy;

iv. The history of incidents/calls for police service on or immediately adjacent to the premises;

v. The requested activity requiring a Conditional Use Permit;

vi. The hours of operation of the business; and;

vii. Actual site conditions. This includes the location of the business, floor plan, and site design.

viii. The operator’s signed business plan outlining all proposed on-site activities, services, facility features, staff levels,

and all other aspects of the interest to the Whittier Chief of Police or his designee.

ix. A security plan for the business during and after all normal business hours;

x. If applicable, a business and security plan for any/all future special events that take place during or after normal business hours.

b. The Whittier Chief of Police or his designee may alter the number of security personnel required at any time, with reasonable written notice, based upon changes to the factors in the subsection above or other observed or noticed conditions at the premises, including specific days, times, or occasions necessitating additional security, such as temporary uses, special events or functions, holidays (both observed and celebrated in the United States).

3. The minimum number of required on-site security officers shall be specified by the Whittier Chief of Police or his designee based on the information provided by the business owner, as required within Section 18.43.060(A)(2)(a).

4. For businesses operating after 11:00 pm., the minimum hours during which required security officers shall be on-site shall be from 11:00 p.m. to 2:30 a.m, or one-half hour after the closing of business hours, if closing is earlier than 2:00 a.m., or as specified by the Whittier Chief of Police Department.

5. Trained, private, security personnel or officers may be employees of the business establishment, except when the approval authority or Whittier Chief of Police (or his designee) as determined that such personnel or officers be provided by an independent security company.

6. The business establishment owner shall be responsible for ensuring that the business' security personnel or officers implement and enforce, at all times, the Whittier Police Department's approved and signed security plan for the business.

7. All private security personnel or officers shall be currently trained, licensed and bonded according to the requirements of California law, including, but not limited to, the requirements of California Business & Professions Code section 7580, et seq., and California Code of Regulations section 600, et seq.

8. All private security personnel or officers shall wear a standardized shirt or jacket, as specified and/or approved by the Whittier Chief of Police or his designee, which shall bear a logo indicating that the wearer is a security officer, and shall bear on the front the name of the individual business establishment providing said officer or personnel.

9. The business establishment owner shall have the responsibility for ensuring that its required private security personnel or officers shall, at all times, while on duty, be able to communicate with other required security officers for that business establishment.

10. The business operator/owner shall install a burglary alarm and video surveillance system that shall be maintained in working condition at all times. The business shall provide the Whittier Chief of Police or their designee with after-hours contact information and post an alarm company contact number outside of the business in a conspicuous location.

11. The on-site security for a business shall discourage tailgating (private partying) in parking lots by directing patrons or former patrons to leave the area immediately and by making an immediate report to the Whittier Police Department for those patrons who refuse to leave the parking lot, as directed.

12. All on-site security personnel, as well as the business owner, corporate officers and managers shall cooperate with City officials and law enforcement personnel, and shall not obstruct or impede their entrance into the licensed premises while in the course of their official duties.

13. The entity holding the business license for the subject premises shall be responsible for reimbursing the City of Whittier for all costs associated with any extraordinary police services required to ensure the safety of the community and/or patrons, resulting from incidents related to the business establishment.

14. On-site security personnel along with regular customer service employees shall be responsible for the monitoring of customers for intoxication and shall be accountable for ensuring that the sale or service of alcoholic beverages to such individuals is refused.

15. If any on-site live entertainment or musical performances are provided, the business owner shall ensure that the on-site security personnel discourages undue noise and property damage, to prevent criminal misconduct, and notify the Whittier Police Department of any unlawful activities which may occur.

16. Prior to the sale of any on-site alcoholic beverages for on-site consumption, the business shall provide a security plan for the premises that

shall be reviewed and approved by the approval authority, based on the recommendations of the Whittier Chief of Police or their designee. The security plan shall address the following issues, in addition to any others, as determined by the approval authority and the Whittier Chief of Police (or their designee):

a. On-site security within the parking lot and the surrounding areas, as well as specific interior areas of the facility;

b. Alcoholic beverage sales and security;

c. Uniforms for in-house and contracted security personnel;

d. Minimum training standards required for all security staff;

e. The number of, and roles of, in-house and contracted security personnel;

f. Specific plans for ensuring the orderly dispersal of patrons immediately prior to, during, and after closing time;

g. Specific plans to ensure the orderly conduct of patrons who are waiting to enter the establishment;

h. Specific plans for managing unruly patrons;

i. Specific plans for the use of video monitoring based on the standards set forth in Section 18.44.070, Subsection K, in Ordinance 2744;

j. Times and appropriate numbers for required use of uniformed parapolice as part of the security presence; and

k. Standard operating procedures for managing temporary and/or permanent on-site events, live entertainment, dancing etc.

18.43. 070 Training.

A. All owners, managers and employees serving and/or selling alcoholic beverages for on-site consumption within a business establishment shall undergo and successfully pass/complete a certified training program for responsible beverage service/sales, deemed acceptable by the Whittier Chief of Police or his designee, in responsible methods and skills for serving and selling alcoholic beverages.

B. Within 45 days of beginning employment, new employees shall be required to complete the certified training for responsible beverage service and sales. All records pertaining to each owner, manager, supervisor, and employee's successful completion of the certified training program required by this section shall be maintained on the premises of the business and shall be presented upon request by a representative of the City of Whittier.

C. Responsible beverage service and sales training shall be required for all new alcoholic beverage outlets with on-site consumption and for any existing alcoholic beverage outlet upon a finding of the approval authority that the establishment is operated or maintained under objectionable conditions that constitute a public nuisance.

D. To qualify to meet the requirements of this section, a certified program must meet the standards of California Coordinating Council on Responsible Beverage Service (CCC/RBS) or other certifying/licensing body which the State of California may designate.

E. New and existing alcoholic beverage establishments shall comply with the requirements of this section within 180 calendar days after the issuance of a Conditional Use Permit for on-site alcoholic beverage sales. Existing alcoholic beverage establishments shall comply with the requirements of this section within 180 days of the effective date of this ordinance.

18.43.080 Lighting standards.

A. Outdoor. All outdoor areas (including any private areas) shall comply with the following standards:

1. Have lighting with a minimum illumination level of two (2) foot-candles for security and safety purposes, with a maximum to minimum ratio no greater than 6:1.

2. Vertical illumination five (5) feet above the ground shall be at least equal to the horizontal illumination at ground level.

3. The lighting system shall be designed to not exceed 0.5 foot-candles of light spillage onto the street and adjoining properties, and shall include integral shielding and selective fixture placement to restrict unwanted light and nuisance glare, as determined by the Director of Community Development.

5. Decorative lights with individual light sources emitting 300 lumens or less and temporarily installed between November 1 and January 15 are exempt from this requirement.

B. Indoor Lighting. Shall comply with the following provisions:

1. Indoor lighting shall be no less than one-half (0.5) foot-candles throughout the customer areas of the establishment, except that no less than 1.25 foot-candles shall be minimally maintained and evenly distributed at ground level in all dancing areas. Lighting level shall be measured at six (6) feet above finished floor.

2. Indoor lighting may not be turned off or reduced so that the intensity of the lighting on a dance floor makes it difficult to clearly see or identify individuals dancing.

3. If visible from a public street, highway or other public thoroughfare used for vehicular traffic, no stationary interior electric lighting or illumination system may be constructed or maintained which is, contains or utilizes:

a. An exposed incandescent lamp with a rated wattage in excess of 40 watts or 480 lumens.

b. An exposed incandescent lamp with an internal metallic reflector.

c. An exposed incandescent lamp with an external reflector.

d. A revolving beacon light.

e. A continuous or sequential flashing operation in which more than one-third of the lights are turned on or off at one time.

f. An illuminating device or devices which produce illumination in excess of what is permitted in Section 21466.5 of the State of California Vehicle Code.

18.43.090 Special provisions.

A. Preventative Design. The site plan and floor plan of all businesses shall be reviewed for opportunities to incorporate design features to assist in reducing alcohol-related problems. The approval authority may condition preventative design features. Such features may include, but are not limited to: openness for surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways, and neighboring property; illumination of exterior areas, and limiting furnishings and features that encourage loitering and nuisance behavior.

B. Queuing Areas. All establishments shall provide an interior queuing or waiting area, separate from customer service areas.

C. Special Conditions of Approval. The approval authority shall have the right to place special conditions of approval on any application to regulate the primary and secondary impacts resulting from the sale, service and on-site consumption of alcoholic beverage sales, including any/all related on-site activities, services and entertainment.

D. All direct costs relating to the City administrative expenses associated with processing, reviewing, enforcing and/or regulating any special

on-site event with alcoholic beverage sales shall be borne solely by the business and/or property owner prior to the event/activity being conducted. Direct costs shall include the fully burdened rates for all such City employees, which include hourly rates and the proportional costs of employee benefits.

18.43.100 ~~Posting and~~ Acknowledgement of Conditions of Approval.

A. The property owner of any business with the operational characteristics described within Section 18.43.010 (Purpose) shall ~~post and~~ maintain a copy of this Ordinance ~~in a conspicuous public place within the business~~ in addition of any special conditions of approval that have been adopted by the City for the business operation. A signed acknowledgement in writing shall be submitted to the City stating that the property owner shall ensure that the business manager, and/or employees of the on-site business is aware of and agrees to comply with all of the requirements of this Ordinance as well as any special conditions of approval that have been adopted by the City for the business operation.

B. Prior to selling, handling, distributing or managing the service of alcoholic beverages, all employees and management staff shall legibly print and sign their names acknowledging that they have each read and understood the provisions of this ordinance and any/all conditions of approval that may have been adopted by the City of Whittier for the establishment and operation of the business. The written acknowledgement of each employee shall be kept on file with the business owner and presented upon demand by a representative of the City of Whittier.

18.43.110 Waivers.

A. Modifications or waivers to the standards and provisions contained within this Chapter may be granted by the approval authority, subject to the approval of a conditional use permit, if it is determined that the standards and/or provisions which are being requested to be altered or waived will not impact the public health, safety and welfare.

18.43. 120 Nonconforming.

A. Except as provided in this Chapter, the provisions of Chapter 18.62 (Nonconforming Uses, Structures and Sites) of the Whittier Municipal Code shall be applicable to all business with the operational characteristics described within Section 18.43.010 (Purpose). In the event any conflict between the provisions of this chapter and the provisions of Chapter 18.62, the provisions of this Chapter shall control.

18.43.130 Revocation.

A. The following conditions shall trigger the scheduling of a public hearing before the appropriate approval authority to determine whether or not the conditional use permit issued to the business for alcoholic beverage sales or service shall be revoked or modified:

1. Issuance of three (3) or more collective administrative or criminal notices of violation or citations within a twelve (12) month period, from any combination of either administrative, criminal, (or both) from the Fire Marshal, the Building Official, Code Enforcement, and/or the Police Department.

2. The imposition of any disciplinary action or finding of violation by the Department of Alcoholic Beverage Control.

3. Three (3) or more documented instances within a twelve (12) month period of behavior detrimental to the public health, safety, welfare, peace, or comfort of persons residing, visiting, or working in the neighborhood or injurious to property or improvements in the area, unless the Chief of Police (or his designee) or the Director of Community Development determines that immediate review is necessary due to a particular incident.

a) The City of Whittier does not want to discourage business owners or others from contacting the police department or any other emergency service provider when warranted. Therefore, the number of emergency calls for service to the Whittier Police Department may not necessarily be used as the singular basis for concluding that a business is operating as a nuisance.

B. The approval authority may revoke a Conditional Use Permit following the procedures set forth in Chapter 18.52.160, based on any one or more of the following findings:

1. That the Conditional Use Permit was approved based of information that was erroneous, fraudulent, misleading or misrepresented, regardless of the intent of the entity that obtained the Conditional Use Permit;

2. That the condition(s) of approval adopted under the conditional use permit for the business have been violated in whole or in part;

3. Local, State and/or Federal law was violated;

4. The establishment for which the permit was issued is being operated in an illegal, unpermitted or disorderly manner;

5. The noise generated from the establishment violates the City's Noise Ordinance;

6. The business or establishment for which the Conditional Use Permit was issued has had or is having an adverse impact on the public health, safety, peace, comfort and/or general welfare;

7. There is a violation or failure to maintain a valid California Department of Alcoholic Beverage Control license;

8. The business or establishment fails to fully comply with the rules, regulations and orders of the Department of Alcoholic Beverage Control or the terms and conditions of its Department of Alcoholic Beverage Control permit;

9. The use for which the Conditional Use Permit was granted has ceased to exist by reason of voluntary abandonment.

18.43.150 Discontinuance and enforcement

A. Any Conditional Use Permit for a business with the operational characteristics described within Section 18.43.010 (Purpose) may be summarily revoked following a public hearing thereon if the use is discontinued for at least ninety (90) consecutive calendar days or more or if the Alcoholic Beverage Control license for the establishment has been revoked without a replacement license being approved. The approval authority shall hold a noticed public hearing to consider the revocation pursuant to Section 18.52.160 of the Whittier Zoning Code.

B. Any violation to this Chapter shall be prosecuted as a misdemeanor.

-The End-