ORDINANCE NO. 2010-02

AN ORDINANCE OF THE CITY OF SANTA CRUZ AMENDING TITLE 24 OF THE SANTA CRUZ MUNICIPAL CODE AND TO PART 12 OF THE MUNICIPAL CODE MODIFYING ALCOHOL BEVERAGE SALES REGULATIONS

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

<u>Section 1.</u> Title 24 of the Santa Cruz Municipal Code is hereby amended as follows:

Part 12: ALCOHOLIC BEVERAGE SALES

24.12.1100 DEFINITIONS

- a. As used in this chapter, the following terms shall have the meaning set forth below, unless the context clearly dictates a different meaning.
- 1. "Low-Risk Alcohol Outlet." A low-risk alcohol outlet is a bona fide restaurant, wine-tasting room, brewpub (Type 75), bed and breakfast inn, conference center and similar establishments that include food service but do not include live entertainment except incidental live entertainment or food store where alcoholic beverages are sold.
- 2. "High-Risk Alcohol Outlet." A high-risk alcohol is a retail outlet where alcoholic beverages are sold such as a bar, tavern, liquor store, convenience store, nightclub, banquet facility, and/or premise where live entertainment and/or dancing occurs.
- 3. "Eating and Drinking Establishment Bona Fide Restaurant". A bona fide restaurant is a retail establishment which is regularly and in a bona fide manner used and kept open for the principal purpose of serving a variety of meals or menu items to patrons for compensation, and which has (1) suitable kitchen facilities on the premises which contains conveniences for cooking an assortment of foods which may be required for ordinary meals and for which the kitchen must be kept in a sanitary condition and must be in compliance with the local department of health regulations; (2) a primary use of sit-down service to patrons; (3) adequate eating arrangements for patrons on the premises; (4) sale of alcoholic beverages as an incidental use and only when served a tables or counters and (5) does not include live entertainment except incidental live entertainment. A bona fide restaurant, which includes, but is not limited to, any facility which has obtained a Department of Alcoholic Beverage Control license such as a Type 41 or Type 47, does not include any billiard or pool hall, video arcade, game parlor, card room, gambling establishment, bowling alley, shooting gallery or adult entertainment business and (6) a minimum of 51-percent of the monthly gross receipts shall be from the sale of meals, not to include cover or admission charges, or alcoholic beverages sales, during the same period. The owner/operator may be required to submit certified records or evidence pertaining to the sales of meals and alcoholic beverages to the finance department as part of review of the use permit, upon request by city officials, for the purpose of verifying compliance.
- 4. "Incidental Live Entertainment." Incidental live entertainment is live entertainment with instrumental and vocal music with small personal amplifiers provided for the listening pleasure of patrons, and which does not include karaoke or a disc jockey format or dancing and has an indoor stage/performance area not exceeding 80 square feet.
- 5. "Live Entertainment." Live entertainment involves music, comedy, readings dancing, acting or other entertainment performed by one or more persons, whether or not such person or persons are compensated for such performances. This use includes dancing by patrons to live or recorded music.

6. "Nightclub. "A nightclub is a retail establishment which is regularly and in a bona fide manner used and kept open for the principal purpose of providing live entertainment, foot, and beer and wine or distilled spirits; is considered a public premise which does not allow entrance to any person under twenty-one year of age; does not allow for sale of alcoholic beverages for consumption off the premises and is considered a high-risk alcohol establishment

4.12.1101 SPECIAL USE PERMIT REQUIREMENT FOR HIGH-RISK ALCOHOL OUTLETS.

- 1. Special Use Permit Required. In addition to the other requirements set forth in Sections 24.12.1100 through 24.12.1114 of this part, on and after the date the ordinance codified in this part becomes effective, no high-risk alcohol outlet, as that term is defined pursuant to Section 24.22.437, whether on-sale or off-sale, shall be established without first obtaining a special use permit from the city of Santa Cruz, in accordance with this part and Chapter 24.08.
- 2. Posting Requirement. A copy of the conditions of approval for the special use permit shall be kept on the premises of the establishment and posted in a place where it may readily be viewed by any member of the general public.
- 3. Findings. In approving a special use permit, it shall be determined by the hearing body that all of the following apply:
- a. The proposed use complies with all of the mandatory requirements of this section and Section 24.12.1102;
- b. The proposed use will not adversely affect the health, safety or welfare of area residents, or uses, or will not result in an undue concentration in the area of high-risk establishments dispensing, for sale or other consideration, alcoholic beverages, including beer and wine;
- c. The operational characteristics of the proposed use, such as live or amplified entertainment, will not have a negative impact upon the surrounding area;
- d. The proposed use is compatible with the sizes and types of other neighboring uses in the surrounding area; and
- e. The proposed use is not located in what has been determined to be a high-crime area, or where a disproportionate number of police service calls occur.
- 4. Conditions. The planning commission or city council on appeal, may deny any application which is inconsistent with the above-noted findings, or may impose any conditions on the applicant or proposed location reasonably related thereto, or to the health, safety or welfare of the community, in addition to the specific requirements set forth in Section 24.12.1102. (Ord. 95-03 § 1 (part), 1995).

24.12.1102 REQUIREMENTS FOR HIGH-RISK ALCOHOL OUTLETS.

1. Except as provided in Section 24.12.1102(1)(a) below, no high-risk alcohol outlet shall be located within six hundred feet of any other high-risk alcohol outlet (including legal, nonconforming low risk outlet approved with an Administrative Use Permit that would be considered a high risk outlet under the ordinance currently in effect), any public educational use zoned P-F, public park with a playground, hospital, medical clinic, alcohol or other drug abuse recovery or treatment facility, or community care residential facility providing mental health/social rehabilitation services. For the purpose of this subsection, the six-hundred-foot distance requirement shall be measured from the periphery of the property boundary of such establishments. With respect to a public park with playground, the six-hundred-foot distance shall be measured from the periphery of the playground area.

- a. The planning commission, or the city council on appeal, may grant an exception to the six-hundred-foot spacing requirement between high-risk alcohol outlets, except in the case of public educational uses, only if the applicant can establish that any public benefit that could be served by the issuance of the special use permit will outweigh concerns affecting public health and safety. The burden of proof is on the applicant to show that the overall effect will be positive.
- 2. A wall or other appropriate buffer may be required around the parking area of such establishments when said area is adjacent to properties zoned or used for residential purposes or any of the above-referenced sensitive uses.
- 3. Exterior lighting of the parking area shall be kept at a sufficient intensity so as to provide adequate lighting for patrons, while not disturbing surrounding residential or commercial areas.
- 4. All establishments shall be required to have a public telephone listing and to control incoming phone calls.
- 5. The applicant shall be required to provide evidence of the adoption and implementation of Responsible Beverage Service (RBS) policies and practices, including, but not limited to participation in a formal RBS training program. For the purposes of this subsection, "formal RBS training program" shall mean any program from a list of vendors or programs approved by the Santa Cruz Police Department.
 - 6. Employees shall be at least twenty-one years of age to sell and serve alcohol.
- 7. The applicant must bear the cost of modifications or cease operations if, subsequent to the approval of a special use permit, it is determined pursuant to Section 24.12.1110 that the establishment constitutes a public nuisance.
 - 8. Special requirements for on-sale establishments:
- a. The sale of alcoholic beverages for consumption off the premises shall be prohibited; and
- b. Special security measures such as security guards and burglar alarm systems may be required.
 - 9. Special requirements for off-sale establishments:
- a. The operation of video or any other electronic games shall be prohibited in conjunction with the sale of alcoholic beverages;
- b. If the establishment is located in a shopping center, the sale of alcoholic beverages for consumption on the appurtenant common areas may be prohibited;
- c. Exterior public telephones, limited to outgoing calls only, may be located on the premises;
- d. Litter and trash receptacles shall be located at convenient locations inside and outside establishments, and operators of such establishments shall remove litter and debris on a daily basis; and
- e. Paper or plastic cups shall not be sold in quantities less than their usual and customary packaging.
 - 10. Special Requirements for establishments with live entertainment.
 - a. A yearly entertainment permit from the Police Department must be obtained.
- b. An acoustical study is required to insure that sound attenuation techniques have been implemented and that noise generated by the facility meets the performance standards in the zoning ordinance.
- c. Security personnel shall be provided on the premises and/or around the perimeter of the property as required by the Police Department.
 - d. Security measures such as additional lighting and/or security cameras maybe required.

- e. The maximum occupancy is limited to the number identified by the Fire Marshall and may be further limited in the Use Permit based on land use compatibility issues, parking availability and security personnel.
- f. If the public right-of-way is proposed for queuing for patrons, a management plan to control crowds and litter as well as to ensure adequate pedestrian circulation must be made part of the proposal.
- g. Adequate ventilation shall be provided so that openings to the outside can be closed when the facility is at full capacity.
- 11. Conditions. The planning commission, or the city council on appeal, may deny any application which is inconsistent with the findings in subsection (3) of Section 24.12.1100, or may approve said application with reasonable conditions related to the public health, safety or welfare, including but not limited to, those set forth in Section 24.12.1102. (Ord. 95-03 § 1 (part), 1995).

24.12.1104 ADMINISTRATIVE USE PERMIT REQUIRED FOR LOW-RISK ALCOHOL OUTLETS.

- 1. Administrative Use Permit Required. In addition to the other requirements set forth in this part, on and after the effective date of the ordinance codified in this chapter, no low-risk alcohol outlet shall be established without first obtaining an administrative use permit from the city of Santa Cruz, in accordance with Chapter 24.08 and this part.
- 2. Posting Requirement. A copy of the conditions of approval for the administrative use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by any member of the general public.
- 3. Findings. In approving an administrative use permit it shall be determined by the hearing body that:
- a. The proposed use complies with all of the requirements of this section and Section 24.12.1106;
- b The proposed use will not adversely affect the health, safety or welfare of area residents, or uses, or will not result in a harmful concentration in the area of establishments dispensing, for sale or other consideration, alcoholic beverages, including beer and wine;
- c. The operational characteristics of the proposed use, such as live or amplified entertainment, will not have a negative impact upon the surrounding area; and
 - d. The proposed use is consistent with the surrounding neighborhood character.
- 4. Conditions. The zoning administrator, or zoning board or city council on appeal, may deny any application which is inconsistent with the above-noted findings, or may approve said application with reasonable conditions related to the public health, safety or welfare, including, but not limited to, those set forth in Section 24.12.1106. (Ord. 95-03 § 1 (part), 1995).

24.12.1106 REQUIREMENTS FOR LOW-RISK ALCOHOL OUTLETS.

- 1. A wall or other appropriate buffer may be required around parking areas when said area is adjacent to properties zoned or used for residential purposes or to sensitive uses, including, but not limited to, educational uses (public), public parks with playgrounds, and other similar uses.
- 2. Exterior lighting of parking areas shall be kept at a sufficient intensity so as to provide adequate lighting for patrons, while not disturbing the surrounding residential or commercial area.
- 3. The applicant may be required to provide evidence of the adoption and implementation of Responsible Beverage Service (RBS) policies and practices, including, but not limited to,

participation in a formal RBS training program. For the purposes of this subsection, "formal RBS training program" shall mean any program from a list of vendors or pro-grams approved by the Santa Cruz Police Department.

- 4. The applicant may be required to have employees be at least twenty-one years of age to sell and serve alcohol.
- 5. The zoning administrator, and the planning commission or city council on appeal, shall have the right to impose additional conditions as are necessary or advisable for the protection of the public health, safety and welfare.
 - 6. All establishments shall be required to have a public telephone listing.
- 7. The applicant must bear the cost of modifications or cease operations if, subsequent to the approval of an administrative use permit, it is determined pursuant to Section 24.12.1110 that the establishment constitutes a public nuisance.
 - 8. Special requirements for eating and drinking establishments:
- a. Food must be available at all hours that the establishment is open for business; however, the full kitchen need not be open or staffed;
- b. Special security measures such as security guards and burglar alarm systems may be required.
 - 9. Special requirements for brewpubs:
- a. Food must be available at all hours that the establishment is open for business; however, the full kitchen need not be open or staffed;
- b. Special security measures such as security guards and burglar alarm systems may be required.
 - 10. Special requirements for off-sale establishments:
- a. The operation of video or any other electronic games may be prohibited in conjunction with the sale of alcoholic beverages;
- b. If the establishment is located in a shopping center, the sale of alcoholic beverages for consumption on appurtenant common areas may be prohibited;
- c. Litter and trash receptacles shall be located at convenient locations inside and outside establishments, and operators of such establishments shall remove litter and debris on a daily basis; and
- d. Paper or plastic cups shall not be sold in quantities less than their usual and customary packaging.

(Ord. 95-03 § 1 (part), 1995).

24.12.1108 MODIFICATION OF EXISTING ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES.

1. Any establishment lawfully existing prior to the effective date of this section and licensed by the State of California for the retail sale of alcoholic beverages for on-site and/or off-site consumption shall obtain a special use permit when (a) the establishment changes its type of liquor license within a license classification and/or (b) there is a substantial change in the mode or character of operation. For purposes of this Part, "substantial change in the mode or character of operation" shall include, but not be limited to, (a) a pattern of conduct in violation of other laws or regulations, (b) an increase of 20% or greater of floor area in any five-year period to accommodate retail sale of alcoholic beverages for on-site and/or off-site consumption, or (c) either (1) in the case of an establishment which operates on property being acquired by the city or redevelopment agency by eminent domain or under threat of condemnation and which is required to discontinue or otherwise cease operation because of construction activities undertaken by the city or redevelopment agency, a period of closure for at least two years or six

months after the city's or redevelopment agency's construction activities are completed so as to enable said use to resume, whichever is later, or (2) in any other case, a period of closure for at least six months; or (d) there is a request to add dancing, or there is request for a major extension of hours or changes related to type of entertainment.

2. Any establishment which becomes lawfully established on or after the effective date of this Part and licensed by the State of California for the retail sale of alcoholic beverages for on site and/or off-site consumption shall obtain a modification of use permit when (a) the establishment changes its type of liquor license within a license classification and/or (b) there is a substantial change in the mode or character of operations of the establishment. (Ord. 2000-19 § 2, 2000: Ord. 98-13 § 2, 1998: Ord. 95-03 § 1 (part), 1995).

24.12.1110 EXISTING USES DEEMED APPROVED.

Any high- or low-risk alcohol outlet lawfully in existence at the time that the ordinance codified in this part becomes effective shall be deemed approved for such use. However, if the planning commission determines, after notice and a hearing in accordance with Sections 24.12.1112 and 24.12.1114, that the failure to adhere to any requirement imposed upon new or expanded uses pursuant to this part is creating a public nuisance, or that such use constitutes a public nuisance in accordance with any other provision of the Santa Cruz Municipal Code, the planning commission may impose additional conditions upon the operation of such use as are necessary to abate the nuisance. Such measures may include, but shall not be limited to, any of the specific requirements set forth herein for new high- or low-risk alcohol outlets, and, if necessary, revocation of the deemed approved status and discontinuance of the use. (Ord. 95-03 § 1 (part), 1995).

24.12.1112 MODIFICATION, DISCONTINUATION OR REVOCATION.

Notwithstanding any provision of the Santa Cruz Municipal Code to the contrary, for any use permit granted in accordance with the provisions of this part or any deemed approved use subject to this part, the planning commission may require the modification, discontinuance or revocation of any such use permit or deemed approved use, in accordance with the procedures set forth in Section 24.12.1114, if the zoning board determines that the use as operated or maintained constitutes a public nuisance. Such a determination shall be made if the planning commission determines that any of the following conditions, all of which are hereby declared a public nuisance, exist:

- a. Any condition which has caused or resulted in repeated activities which are harmful to the health, peace or safety of persons residing or working or visiting in the surrounding area, as well as to consumers, including, but not limited to, disturbances 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, loitering, excessive littering, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations or traffic safety based upon last-drink statistics, curfew violations, lewd conduct, or police detention and arrests; or
- b. Any condition which violates any provision of this part or any other city, state, or federal regulation, ordinance or statute, where the violation creates a public nuisance. (Ord. 95-03 § 1 (part), 1995).

24.12.1114 PROCEDURES, NOTICES, HEARINGS, APPEALS.

1. The zoning administrator may give notice to the record owner and lessee of the real property affected to appear at a public hearing before the planning commission, at a time and

place fixed by the administrator, and show cause why the use should not be modified, discontinued or revoked, as the case may be. A written notice shall be sent by certified mail not less than fourteen days prior to the date of hearing to the owner and lessee of the property involved, and by regular mail or other means to the owners and residents of all property within and outside of the city that is within six hundred feet of the exterior boundaries of the properties involved.

- 2. After such notice and hearing, the planning commission may require the modification, discontinuance, or revocation of the subject use. As part of any such action, the planning commission may impose such conditions as the planning commission deems appropriate, including those necessary to protect the best interest of the surrounding property or neighborhood, to eliminate, lessen, or prevent any detrimental effect thereon, or to assure compliance with other applicable provisions of law.
- 3. Any such action shall be supported by written findings, including a finding that the action taken does not impair the constitutional rights of any person. However, the planning commission may require that a use be discontinued or revoked only if the planning commission also finds that:
- (a) Prior efforts to compel the owner or lessee to eliminate the problems associated with the use have failed; and
- (b) That the owner or lessee has failed to demonstrate, to the satisfaction of the zoning board, the willingness and ability to eliminate the problems associated with the use. (Ord. 95-03 § 1 (part), 1995).

24.12.1116 ENFORCEMENT.

The city attorney is hereby authorized and directed to enforce all orders issued by the planning commission, and city council on appeal, in accordance with the procedures set forth in Chapter 1.08 of the Santa Cruz Municipal Code, in addition to any other remedies available by law. (Ord. 95-03 § 1 (part), 1995).

PASSED FOR PUBLICATION this 26th day of January, 2010, by the following vote:

AYES: Councilmembers Lane, Mathews, Beiers, Madrigal, Robinson, Vice

Mayor Coonerty; Mayor Rotkin.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: <u>ss/Mike Rotkin</u> Mayor

ATTEST: ss/Lorrie Brewer City Clerk

This Ordinance is scheduled for further consideration at the Council meeting of Febuary 9, 2010.