

ORDINANCE NO. 2015-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ AMENDING SECTIONS 24.12.1100, 24.12.1110, 24.12.1112, 24.12.111, 12.1116 AND SECTIONS 24.22.437, 24.22.529, 24.22.338.1, 24.22.340, 24.22.341 and 24.22.560.1 OF THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO HIGH RISK AND LOW RISK ALCOHOL OUTLETS AND RELATED DEFINITIONS

BE IT ORDAINED By the City of Santa Cruz as follows:

Section 1: Section 24.12.110 of the Santa Cruz Municipal Code is hereby amended to read as follows:

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 outlet” is a retail outlet where alcoholic beverages are sold such as a bar, tavern, liquor store, convenience store, nightclub, banquet facility, and/or premises where live entertainment and/or dancing occurs, and/or any on-sale or off-sale alcohol outlet which, as part of its regular operating hours, stays open past midnight on one or more days of the week.

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 at 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 fifty-one 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” 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 eighty square feet.

5. “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, food, and beer and wine or distilled spirits; is considered a public premises which does not allow entrance to any person under twenty-one years of age; does not allow for sale of alcoholic beverages for consumption off the premises and is considered a high-risk alcohol establishment.

Section 2: Section 24.12.1110 of the Santa Cruz Municipal Code is hereby amended to read as follows:

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 zoning administrator 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 zoning administrator 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, suspension of alcohol sales or revocation of the deemed approved status and discontinuance of the use.

Section 3: Section 24.12.1112 of the Santa Cruz Municipal Code is hereby amended to read as follows:

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 zoning administrator may require the modification, suspension, 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 administrator determines that the use as operated or maintained constitutes a public nuisance. Such a determination shall be made if the zoning administrator 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, excessively 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, police detention and arrests, alcohol sales to minor or inebriates, or other conduct detrimental to public health and safety; 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.

Section 4: Section 24.12.1114 of the Santa Cruz Municipal Code is hereby amended to read as follows:

24.12.1114 PROCEDURES, NOTICES, HEARINGS, APPEALS.

1. The Police Chief or City Attorney may give notice to the record owner and lessee of the real property affected to appear at a public hearing

before the zoning administrator, at a time and place set forth in the notice, and show cause why the use should not be modified, suspended, 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 zoning administrator may require the modification, suspension, discontinuance, or revocation of the subject use. As part of any such action, the zoning administrator may impose such conditions as the zoning administrator deems appropriate, including those necessary to protect the public health and safety and the best interest of the surrounding property or neighborhood, and so as 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 zoning administrator may require that a use be discontinued or revoked only if the zoning administrator 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 administrator, the willingness and ability to eliminate the problems associated with the use.

4. Notwithstanding Section 24.04.181 of this title, any decision of the zoning administrator made pursuant to this section shall be appealable directly to the City Council in accordance with the procedures set forth in Sections 24.04.182, 24.04.183, 24.04.184 and 24.04.185 of this title.

Section 5: Section 24.12.1116 of the Santa Cruz Municipal Code is hereby amended to read as follows:

24.12.1116 ENFORCEMENT.

The city attorney is hereby authorized and directed to enforce all orders issued by the zoning administrator, and city council on appeal, in accordance with the procedures set forth in Title 4, in addition to any other remedies available by law.

Section 6: Sections 24.22.437 and 24.22.529 of the Santa Cruz Municipal Code are hereby deleted.

Section 7: Sections 24.22.338.1, 24.22.340, 24.22.341 and 24.22.560.1 of the Santa Cruz Municipal Code are hereby amended to read as follows:

24.22.338.1 EATING AND DRINKING ESTABLISHMENTS – TYPE 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 at 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 fifty-one 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.

24.22.340 ENTERTAINMENT, LIVE

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.

24.22.341 ENTERTAINMENT, INCIDENTAL LIVE

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

24.22.560.1 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, food, 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.

Section 8. This ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 10th day of February, 2015, by the following vote:

AYES: Councilmembers Chase, Terrazas, Comstock, Posner, Noroyan; Vice Mayor Mathews; Mayor Lane.
NOES: None.
ABSENT: None.
DISQUALIFIED: None.

APPROVED: ss/Don Lane, Mayor

ATTEST: ss/Bren Lehr, City Clerk Administrator

PASSED FOR FINAL ADOPTION this 24th day of February, 2015, by the following vote:

AYES:
NOES:
ABSENT:
DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk Administrator

This is to certify that the above
and foregoing document is the
original of Ordinance No. 2015-06
and that it has been published or
posted in accordance with the
Charter of the City of Santa Cruz.

City Clerk Administrator