

FOCUSED ZONING CODE UPDATE

1. Alcohol Sales

Background

A. Types of Alcoholic Beverage Licenses in California

To sell beer, wine, or liquor in the State of California, a business must acquire a license through the Department of Alcoholic Beverage Control (ABC). There are two main types of alcoholic beverage licenses: on-sale retail and off-sale retail.

On-sale Alcohol License

On-sale alcohol licenses grant privileges for on-site consumption. There are two main groups of on-sale retail licenses: beer and wine (Type 41 and Type 42) and full on-sale general liquor (Type 47 and Type 48). These two main groups are then narrowed down to the specific type of business. Type 41 and Type 47 are incidental to food service and commonly used for full-service restaurants. The business applying for a Type 41 or Type 47 must have a kitchen and all age groups are welcomed to be on the premises. For Type 42 and Type 48, no food service is required; these licenses are commonly used for bars or taverns. Due to the business nature of a Type 42 or Type 48 license, only adults age 21 and over are allowed on premise.

Off-sale Alcohol License

Conversely, off-sale alcohol licenses grant privileges for customers to purchase the alcohol to consume off-premise. There are only two main alcohol licenses that grant off-sale privileges: Type 20 (beer and wine) and Type 21 (beer, wine, and spirits). These two types of off-sale retail alcohol licenses are commonly used by service stations, convenience stores, grocery stores, etc.

B. Licensing vs. Zoning

Prior to ABC issuing an alcoholic beverage license, the Department requires an applicant to demonstrate that the business location has zoning in place that permits the sale of alcohol. Per [Section 23790 of the Business and Professions Code](#), ABC cannot issue a retail license contrary to a city's valid zoning ordinance. The applicant must therefore submit a Zoning Affidavit stating that the city's zoning permits the intended use, and if a conditional use permit (CUP) is needed, then a copy of the CUP (or its receipt) is to be included.

Depending on the jurisdiction and the type of alcoholic beverage license, the sale of alcohol may be permitted ministerially (i.e., by right) or through a conditional use permit. For example, some cities require a CUP for *all* alcohol sales while others may allow the ministerial approval of beer and wine sales (Type 41 license)

for bona fide restaurants but require a CUP for bars and taverns and for off-sale retail licenses.

Analysis

- A. General – On-sale and Off-sale Alcohol Licenses:** As shown in Attachments 2A and 2B, the City of Brentwood has 96 active on-sale retail licenses and 37 active off-sale retail licenses. The on-sale licenses range in use to include full-service restaurants, fast casual restaurants (e.g., Chipotle), sports bars, Brentwood Golf Club, etc. Note that some businesses have multiple on-sale retail licenses for the same location. Tailgaters Sports Bar & Grill, for example, has a Type 47 (On-Sale General – Eating Place), Type 58 (Caterer’s Permit), Type 68 (Portable Bar License), and Type 77 (Event Permit). Likewise, off-sale licenses include such uses as grocery stores, pharmacies, convenience stores, and gas stations.
- B. Existing Regulations:** The Brentwood Municipal Code (BMC) does not have citywide development or operational standards regulating alcohol sales establishments. The BMC does, however, specify where alcohol sales establishments are allowed to operate in the City. Overall, the City’s zoning is not consistent on whether on- and off-sale alcohol sales are required to be approved by way of a conditional use permit, which would provide the City with discretionary review ability. For example, in the Downtown, most on- and off-sale alcohol sales (excluding bars) are permitted by right to sell alcohol up to 10:00 p.m. and then requires a Conditional Use Permit for sales after 10:00 p.m. In addition, all bars (Type 42 and Type 48 licenses) within the Downtown would require a Conditional Use Permit. In comparison, PD-6, Subarea RC (which governs properties in and around the Streets of Brentwood), allow for bars and restaurants as permitted uses with no hourly restrictions. Note that the BMC largely uses the term “liquor sales” to mean any business required to obtain an alcoholic beverage license from the Department of Alcoholic Beverage Control for the purpose of selling alcoholic beverages for consumption either on- or off-site.
- C. Locations:** Alcohol sales establishments are allowed in most commercial zoning districts and in certain Planned Development Zones. Below are two tables, with brief descriptions of the requirements for each zoning district allowing alcohol sales. The first table lists the zoning districts that allow on-sale and off-sale licenses without a Conditional Use Permit as an automatically permitted use. The second table lists the zoning districts that require a Conditional Use Permit for either on-sale or off-sale licenses.

Table 1 – Permitted by Right

Zoning	Requirement
Downtown Specific Plan (all areas)	Specialty off-sale liquor, including wine shops and wine tasting, and restaurants serving alcoholic beverages until 10:00 p.m. are permitted.
Brentwood Boulevard Specific Plan (COIR, COI, and General Commercial areas)	Restaurants operating between the hours of 7:00 am and 10:00 pm, including those that sell alcohol for on-premise consumption, are permitted.
PD-3 (Subarea A)	Supermarket, drugstore, restaurant, or similar use
PD-3 (Subarea B)	Supermarket, drugstore, restaurant, or similar use
PD-5 (Subarea B)	Supermarket, drugstore, restaurant, or similar use
PD-6 (Subarea RC)	Bar, tavern, cocktail lounge, and sit-down restaurants
PD-36 (Subarea B)	Supermarket, drugstore, restaurant, or similar use
PD-38 (Subarea A)	Supermarket, drugstore, restaurant, or similar use
PD-38 (Subarea F)	Supermarket, drugstore, restaurant, or similar use
PD-40	Restaurants, cafés, delis, sports bars, less than 10% of an individual building
PD-55 (Commercial Subareas 1 and 2)	Supermarket, drugstore, restaurant, or similar use
PD-56 (Subarea A)	Restaurants and incidental microbrewery
PD-56 (Subareas B and C)	Microbreweries
PD-67 (Subareas A and D)	Supermarket and drugstore
PD-67 (Subareas B and C)	Supermarket, drugstores, and microbreweries

Table 2 – CUP Required

Zoning	Required for which types of sales
C-1 (Neighborhood Commercial)	All on- and off-sale licenses
C-2 (General Commercial)	All on- and off-sale licenses
C-3 (Thoroughfare Commercial)	All on- and off-sale licenses
CR (Commercial Residential)	All on- and off-sale licenses

Zoning	Required for which types of sales
COB (Commercial Office/Business)	All on- and off-sale licenses
Downtown Specific Plan	All on-site and off-site alcoholic beverage sales <u>after</u> 10:00 p.m. in addition to all bars and nightclubs
Brentwood Boulevard Specific Plan (COIR, COI, General Commercial)	All on-site alcoholic beverage sales <u>after</u> 10:00 p.m. in addition to all off-site sales
Innovation Center/PA-1 (ECLI)	All on- and off-sale licenses
Innovation Center/PA-1 (TV/MU and RC)	Off-sale liquor and on-sale bars and nightclubs, and tasting rooms
PD-6 (Subarea RC)	Off-sale convenience/liquor stores
PD-10 (Subareas A-C)	All on-sale licenses and off-sale liquor stores
PD-12 (Subarea A)	All on- and off-sale licenses
PD-16 (Subarea A)	All on- and off-sale licenses
PD-17	All on- and off-sale licenses
PD-18	All on- and off-sale licenses
PD-20	All on- and off-sale licenses
PD-34	All off-sale licenses and restaurants over 5,000 sq. ft.
PD-35 (Subarea B)	All on- and off-sale licenses
PD-36 (Subarea A)	All on- and off-sale licenses
PD-36 (Subarea B)	Off-sale for liquor stores, and bars and lounges
PD-38 (Subareas A and F)	All off-sale liquor stores
PD-38 (Subareas B and E)	All on- and off-sale licenses
PD-41 (Subareas A-D)	All on- and off-sale licenses
PD-42 (Subareas B, C, E, and F)	All on-sale licenses
PD-49 (Subareas A and C)	All on-sale licenses
PD-55	Off-sale liquor stores, and sports bar, lounge, nightclub and similar establishments

Zoning	Required for which types of sales
PD-67 (Subareas A, B, C and D)	On-sale and liquor stores
PD-69	All on- and off-sale licenses

D. Potential Development Standards: As indicated above, there are no citywide development or operational standards regulating alcohol sales establishments in the Municipal Code. Only when a CUP is required has the City been able to consider applications on a case-by-case basis through the discretionary review process, but there are no regulations codified that City staff can apply during the review of a CUP or business license for alcohol sales. The development standards described below are some that are commonly employed by other cities.

- **Separation from Sensitive Uses.** Cities will often require a minimum separation distance from sensitive uses, particularly for off-sale alcohol sales establishments like liquor stores. Sensitive uses may include schools (public and private), established churches or other places of worship, hospitals, convalescent homes, public parks, playgrounds, and/or other similar uses. A jurisdiction may adopt a distance separation standard for sensitive uses to make sure drinking establishments are not too close to schools or youth facilities to prevent access to alcoholic beverages by minors.

At the state level, [Business and Professions Code § 23789](#) authorizes, but does not require, ABC to deny issuance of a retail license for premises located within the immediate vicinity of churches and hospitals, and within 600 feet of schools, public playgrounds, and/or nonprofit youth facilities.

One question to consider regarding schools as a sensitive use is if nursery schools and preschools should be treated in the same manner as K-12 schools. On the one hand, the negative impacts from having a bar or liquor store in close proximity to a preschool or elementary school are the same (e.g., public intoxication, advertisement of alcohol use, etc.), but on the other hand, where K-12 schools are typically limited to residential or institutional zones, nursery schools and preschools are often permitted in a broader area, including the commercial zones where alcohol sales establishments are also allowed. Furthermore, where K-12 schools are perhaps more fixed in their locations, nursery schools and preschools can spring up with greater frequency, given their ability to open in more areas of a city. With that in mind, should nursery schools and preschools be allowed to locate at a given site if the proposed location is too close to an existing on- or off-sale alcohol sales establishment for risk of making the alcohol sales establishment nonconforming due to proximity?

- **Separation from Other Alcohol Sales Establishments.** A city may adopt a distance separation standard between businesses that sell alcohol to prevent

an oversaturation of bars or night clubs in a particular area or a concentration of off-sale alcohol sales establishments like liquor stores and convenience stores that sell alcohol. Separation distances vary in other jurisdictions from 300 feet to 1,500 feet, and the separation requirement could be reduced for off-sale establishments like grocery stores where the sale of alcohol is incidental to the primary retail use.

- Hours of Operation.** For any retail sales establishment with an ABC license, including restaurants, bars, grocery stores, pharmacies, liquor stores, etc., the sale of alcohol is prohibited from 2:00 a.m. to 6:00 a.m. daily. Specifically, [Business and Professions Code § 25631](#) states that *"Any on-sale or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2 o'clock a.m. and 6 o'clock a.m. of the same day, is guilty of a misdemeanor."*

The City may wish to further regulate the operating hours of certain alcohol sales establishments like liquor stores. Alternatively, a provision could be applied whereby the City could restrict a specific off-sale establishment's hours of operation if the business is deemed to be in violation of any conditions of its CUP or for other reasons determined to be good cause.

E. Survey of Other Cities

City	Distance Separation Requirements	Exceptions
Antioch	500 feet from any other on-sale or off-sale liquor establishments or any school, public park, playground, recreational center, day care center, or other similar use	<ul style="list-style-type: none"> • Retail markets having a minimum 10,000 square feet of floor area that devote no more than 5% of such floor area to the sale of alcohol • Restaurants that derive a minimum of 51% of their gross receipts from the sale of meals • Special event functions such as neighborhood or community festivals
Livermore	N/A	N/A
Martinez	Bars shall be an "appropriate" distance from religious facilities, schools, public parks and playgrounds, and other similar uses	N/A
Oakley	N/A	N/A

City	Distance Separation Requirements	Exceptions
Pittsburg	N/A	N/A
Stockton	500 feet from any: <ul style="list-style-type: none"> • Public or private academic school for students in kindergarten through 12th grade, nursery school, preschool, or day-care facility • Public park, playground, recreational area, or youth facility 	<ul style="list-style-type: none"> • Supermarkets and drug stores that do not sell alcoholic beverages as their principal business • Full-service restaurants • Establishments where the on-site consumption of alcohol is an incidental or secondary use, e.g., membership clubs, social, veterans, or fraternal organizations • Established businesses prior to effective date of ordinance
Walnut Creek	N/A	N/A

LUD Summary and Further Discussion

Overall, LUD recommended that staff bring the discussion forward to the entire City Council since the topic was so wide ranging and had the potential to impact a large number of businesses throughout the City. In addition, LUD requested that when the item be presented to the City Council that additional information and considerations be presented including the following:

- Provide suggested definitions that provide separate distinctions between K-12 schools, preschool, and after school care.
 - Consistent with the recently approved Innovation Center Specific Plan definitions, staff recommends using the following definitions within alcohol-regulating provisions for consistency:
 - **Day Care Center, Children** means a facility (excluding residential childcare facilities) of any capacity that provides care and other services in a group setting during a portion of the day for children and licensed as such by the state of California.
 - **Private Educational Facilities** means any privately owned and operated elementary school, middle school, secondary school, high school, or other institution providing academic instruction for students from kindergarten through twelfth (12th) grade pursuant to the California Education Code.
 - **Public School Facilities** means any publicly owned and operated elementary school, middle school, secondary school, high school, or

other institution providing academic instruction for students from kindergarten through twelfth (12th) grade pursuant to the California Education Code.

These definitions were requested by LUD to assist further discussion related to potential separation from sensitive uses. If the City Council wishes to consider adding separation requirements, then these uses would need to be better defined.

- Provide suggested definitions for markets, convenience stores, liquor stores, specialty markets with off-sale licenses.
 - Consistent with the recently approved Innovation Center Specific Plan definitions, staff recommends using the following definitions for consistency:
 - **Food and Beverage Stores – Convenience Store** means easy-access retail stores of 5,000 square feet or less in gross floor area that carry a range of merchandise oriented to convenience and travelers' shopping needs. These stores may be part of a service station or an independent facility. Also see "Food and Beverage Stores – Neighborhood Market" and "Food and Beverage Stores – Grocery Store" for larger stores or stores oriented toward the daily shopping needs of residents.
 - **Food and Beverage Stores – Grocery Store** means a retail business of more than 15,000 square feet in size, where the majority of the floor area open to the public is occupied by food products packaged for preparation and consumption away from the site of the store. These full-service businesses do not typically have limited hours of operation. See separate but related listings for "Food and Beverage Store – Neighborhood market" and "Food and Beverage – Convenience store."
 - **Food and Beverage Stores – Liquor Store** means a retail establishment that has fifty (50%) percent or more of the shelving or gross floor area devoted to the public display and sale of alcoholic beverages for off-site consumption.
 - **Food and Beverage Stores – Specialty Food & Wine** means a retail store characterized by a limited number of high quality specialty food items and/or beverages typically including premium wine and beer.
 - **Food and Beverage Stores – Neighborhood Market** means a pedestrian-oriented grocery/specialty market store offering food products packaged for preparation and consumption away from the site of the store and oriented to the daily shopping needs of surrounding residential areas. Neighborhood markets are more than 5,000 square feet and less than 15,000 square feet in size and operate less than 18 hours per day. For larger stores, see "Food and Beverage Store –

Grocery Store.” Neighborhood markets may include deli or beverage tasting facilities that are ancillary to the market/grocery portion of the use.

These definitions were requested by LUD in order to make sure proposed amendments do not negatively impact potential economic growth and attraction of large merchants to the City. LUD recommended allowing off-site sales related to larger grocery stores, specialty food and wine stores and neighborhood markets while requiring Conditional Use permits for convenience markets where appropriate.

- **Window Signage.** For off-site retail establishments, stricter window signage regulations should be considered for advertisements of alcoholic beverages.
- **Location based Zoning.** Consider individualized regulations for specific areas such as the Downtown, the Innovation Center, and PD-6 (Streets of Brentwood/Raley’s Center), while potentially creating one set of regulations for the rest of the City that would allow for consistency and more easily understood regulations.

On-Sale Licenses

Such regulations for the remaining areas of the City could include allowing by-right on-sale restaurants to sell alcohol if they are not directly adjacent to sensitive uses. Uses adjacent to sensitive uses could potentially be permitted by-right if they maintain established hours of operation and close by a certain hour. Operations outside of the established hours would require Conditional Use Permit approval.

Off-Sale Licenses

New consistent regulations outside of the specified areas could also provide clarification and constancy related to off-site sales related to larger grocery stores, specialty food and wine stores and neighborhood markets, and convenience markets. Staff would recommend allowing by-right grocery stores, specialty food and wine stores, and neighborhood markets, while requiring a conditional use permit for all convenience stores and liquor stores.

A potential downside to these strategies however would be the potential to place new regulations on businesses and uses within the City in the zones identified in Table 1 that currently do not have operating restrictions, making many of the existing uses throughout the City non-conforming.

Requested Council Direction

In order to move forward with a focused update related to alcohol sales, staff needs direction on the recommended development standards and operational requirements for alcohol sales throughout the City. Staff has provided recommendations below and is requesting direction on the following:

- 1. Individualized and General Regulations:** Overall, staff recommends that the City Council consider requiring individualized regulations for specific areas such as the Downtown, the Innovation Center, and PD-6 (Streets of Brentwood/Raley's Center), while potentially creating one set of regulations for the rest of the City that would allow for consistency and more easily understood regulations.
- 2. Definitions:** In addition, staff recommends that new definitions be created within alcohol-regulating provisions for the following:
 - Day Care Center, Children
 - Private Educational Facilities
 - Public School Facilities
 - Food and Beverage Stores – Convenience Store
 - Food and Beverage Stores – Grocery Store
 - Food and Beverage Stores – Liquor Store
 - Food and Beverage Stores – Specialty Food & Wine
 - Food and Beverage Stores – Neighborhood Market
- 3. No further restrictions for on-sale license:** Staff does not recommend further restricting on-sale licenses within the City unless they are located adjacent to, or within a distance as recommended by City Council, to a Public School Facilities or a Private Educational Facility only.
- 4. Separation Requirements:** Staff does not recommend implementing separation requirements from Child Day Care Centers at this time. Staff also recommends that all that the incidental sale of alcohol at all grocery stores, specialty food and wine stores and neighborhood markers be permitted by-right where the use is allowed in the underlying zone.
- 5. CUPs:** Staff recommends that all convenience stores and liquor stores be conditionally permitted where the use is allowed in the underlying zoning.

City Council Options

The following outlines the options for Council when considering the options for alcohol sales:

1. Support Staff Recommendation. If the City Council supports staff's recommendations, staff will draft final language to be brought to the Planning

Commission for consideration and recommendation before being brought back to the City Council for final approval.

2. Modify Staff Recommendation. If the City Council supports modifying staff's recommendations, such as recommending additional sensitive uses, or alternative location based zoning suggestions, the City Council would need to provide clear and concise direction on the proposed changes. Staff would then draft final language to be brought to the Planning Commission for consideration and recommendation before being brought back to the City Council for final approval.

Potential Economic Development Impacts

Maintaining the current guidelines and ability for on-sale and off-sale of alcohol sales by supermarkets, restaurants, wine tasting, bars and night clubs in the Downtown, Innovation Center and PD-6 (Streets of Brentwood/Sand Creek Crossing) is important to the economic vitality of the city and enables such establishments to maximize the ability to be successful in areas that are highly visible and help attract other businesses to the City. Other than the Downtown, the Innovation Center and PD-6 are both located near the Highway 4 Bypass and offer businesses the ability to cater to both locals and visitors alike. In addition, such establishments are partially buffered from existing residential districts due to the proximity of the highway.

Elsewhere in the city, permitting on-sales establishments to sell alcohol unless they are directly adjacent to sensitive uses enables restaurants to sell with meals, maximizing their potential to bring in new customers in an economic market that has shown to be difficult in recent years. In addition, creating consistency across all other zones helps to provide more assurances to new business that may be "on the fence" about opening up a new restaurant under difficult market conditions. In addition, requiring a Conditional Use permit for all convenience markets and liquor stores also helps to minimize the proliferation of such uses across the city. This includes both gas stations and convenience stores, where the sale of alcohol should be based on securing a Conditional Use Permit.