

ATTACHMENT 4

Revisions are shown in **red** text and deletions in **red strikeouts**:

ORDINANCE NO. 2017-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, ADDING SECTION 16.16.370 TO THE HESPERIA MUNICIPAL CODE ESTABLISHING DEEMED APPROVED OPERATING CONDITIONS AND REGULATING OFF-SALE ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS (DCA16-00005)

WHEREAS, the City of Hesperia has the authority, under its police power, to enact regulations for the public peace, morals and welfare of the City pursuant to California Constitution, Article XI, Section 7; and

WHEREAS, California Government Code Section 38771 permits the legislative body of a city to declare what constitutes a nuisance; and

WHEREAS, the City Council acknowledges nuisance conditions are offensive or annoying to the senses, detrimental to property values and community appearance, an obstruction to or interference with the comfortable enjoyment of adjacent property or premises (both public and private), and/or are hazardous or injurious to the health, safety, or welfare of the general public; and

WHEREAS, nuisance and criminal activities such as drug dealing, public drunkenness, loitering and other behaviors that negatively impact neighborhoods occur with disproportionate frequency at and around the premises of on-site and off-site sale alcohol uses.

NOW, THEREFORE, THE CITY COUNCIL OF CITY OF HESPERIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 16.16.370 is hereby added to Article X of Chapter 16.16 of Title 16 of the Hesperia Municipal Code to read in its entirety as follows:

“Section 16.16.370 -- Alcohol Sales and Deemed Approved Alcohol Sales Regulations.

- A. Purpose. This Section requires land use permits for newly established off-sale alcohol establishments that are in addition to the requirements elsewhere in this Code and in the Hesperia Main Street and Freeway Corridor Specific Plan, confers deemed approved status for all existing permitted, conditionally permitted and legal nonconforming off-sale alcohol establishments, provides standards for the continued operation of alcohol establishments, and sets forth grounds for the modification, revocation and termination of conditional use permits and deemed approved status for establishments violating this Section, in order to protect the general health, safety, and welfare of the residents of the City of Hesperia and to prevent nuisance activities where alcoholic beverage sales occur.

Specific purposes for enacting this Section are as follows:

1. To protect residential, commercial, industrial and civic areas from the harmful effects attributable to the sale of alcoholic beverages and minimize the adverse impacts of nonconforming and incompatible uses;
2. To provide opportunities for alcohol establishments to operate in a mutually beneficial relationship to each other and to other commercial and civic services;
3. To provide mechanisms to address problems associated with the public consumption of alcoholic beverages such as litter, loitering, graffiti, unruly behavior, violence, vandalism, and escalated noise levels;
4. To provide that alcohol establishments are not to become the source of undue public nuisances in the community;
5. To provide for properly maintained alcohol establishments so that the secondary effects of negative impacts generated by these activities on the surrounding environment are mitigated;
6. To monitor deemed approved establishments to ensure they do not substantially change in mode or character of operation; and
7. To promote a healthy and safe business environment in the City of Hesperia through appropriate and consistent land use regulations and to encourage the establishment of businesses that will benefit both the local economy and residents while not placing an undue strain on City resources or surrounding businesses.

This Section does not itself authorize or permit alcohol establishments, but only applies to these establishments where otherwise allowed or permitted within an applicable zoning district. The provisions of this ordinance are intended to complement the state of California alcohol-related laws. The City does not intend to replace or usurp any powers vested in the California Department of Alcoholic Beverage Control.

B. Applicability.

1. The provisions of this Section shall apply to the extent permissible under other laws to all alcoholic beverage sales establishments, as defined in Section 16.16.370(C), located in the City of Hesperia.
2. Whenever any provision in this Section, in an existing conditional use permit, or in any other law, ordinance, or regulation of any kind, imposes overlapping or contradictory regulations, or contains restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in this Section.

3. The requirements provided herein are in addition to the requirements found under Chapter 16.20 (General Regulations), Chapter 16.16 (Land Use Designations), the Main Street and Freeway Corridor Specific Plan, any other applicable chapter of the Code, and any other applicable law.

C. Definitions.

The meaning and construction of these words and phrases, as set forth below, shall apply throughout, except where the context clearly indicates a different meaning or construction.

1. “Alcoholic beverage” means alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits, wine, or beer, that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed or combined with other substances, the sale of which requires an ABC license.
2. “Alcoholic beverage sales activity” means the retail sale of alcoholic beverages for off-site consumption.
3. “Alcoholic beverage sales establishment” or “alcohol establishment” means an establishment that conducts alcoholic beverage sales activity. Alcohol establishments include but are not limited to: liquor stores, beer and wine stores, convenience markets, markets, neighborhood specialty food markets, retail sales establishments, wine shops, and service stations. For purposes of this Section, an alcohol establishment also includes a general retail store, a grocery store and a retail pharmacy that devotes any percentage of its gross floor area to the sale and display of alcoholic beverages. As of the Effective Date, an alcohol establishment is an establishment holding (or eligible to hold) an off-sale ABC License Type 20 or 21. For purposes of this Section, an alcohol establishment does not include a lawfully established alcohol beverage production manufacturer such as a winery, brewery or micro-brewery that sells alcohol for off-site consumption.
4. “California Department of Alcoholic Beverage Control” or “ABC” refers to the department of the state of California empowered to act pursuant to Article 20, section 22, of the California Constitution and authorized to administer the provisions of the Alcoholic Beverage Control Act.
5. “Deemed approved establishment” means any existing permitted or conditionally permitted alcoholic sales establishment, or any legal nonconforming alcoholic beverage sales establishment. Such establishment shall be considered a deemed approved establishment effective on the Effective Date, as long as it complies with the deemed approved operational standards set forth in Section 16.16.370(J).
6. “Deemed approved status” means the permitted use of land for a deemed approved establishment. Deemed approved status replaces permitted and conditionally permitted status and legal non-conforming status for alcohol establishments with respect to alcoholic beverage sales activity. Deemed

approved status remains in effect as long as an alcohol establishment complies with the deemed approved operational standards provided in Section 16.16.370(J).

7. "Effective Date" means the effective date of the Ordinance adopting this Section 16.16.370.
8. "Enforcement officer" means the city manager or designee, and chief of police or designee.
9. "Illegal establishment" means an alcohol establishment which has been finally determined to be in noncompliance with local, state or federal laws, the conditions of any applicable permits, or the deemed approved operational standards in this Section. Such an establishment may lose its deemed approved status, and if it does it shall no longer be considered a deemed approved establishment.
10. "Legal nonconforming alcoholic beverage sales establishment" or "legal nonconforming establishment" means an off-sale alcoholic beverage sales establishment which was a nonconforming use pursuant to Article IX of Title 16 of this Code, and for which a valid ABC license had been issued and used in the exercise of the rights and privileges conferred by the license at a time immediately prior to the Effective Date. A legal nonconforming establishment also includes existing alcohol establishments that are not in conformance with the regulations applicable to new alcohol establishments contained in this Section, regardless of whether such activities were allowed as part of a conditional use permit granted prior to the Effective Date. Such an establishment shall be considered a deemed approved establishment and shall no longer be considered a legal nonconforming establishment.
11. "Modify" or "modified" as used in Sections 16.16.370(E), (F) and (G) means the expansion or increase in intensity or substantial change of a use, as these terms are used in Article IX of Title 16 of this Code.
12. "Operational standards" means regulations for the business practice activities and land use for alcohol establishments with: (i) a conditional use permit issued in conformance with this Section on or after the Effective Date, or (ii) deemed approved status. Operational standards constitute requirements which must be complied with by an alcohol establishment in order to maintain its conditional use permit or deemed approved status.
13. "Permitted or conditionally permitted alcohol beverage sales establishment" or "permitted or conditionally permitted alcohol establishment" means an alcohol establishment which is a permitted or conditionally permitted use pursuant to the applicable provisions of the Hesperia Municipal Code or Main Street and Freeway Corridor Specific Plan prior to the Effective Date.
14. "Premises" means the actual space in a building devoted to alcoholic beverage sales.

15. "Redeveloped" means the demolition of an existing alcohol establishment followed by the immediate reconstruction and operation of a replacement alcohol establishment.

D. Public hearing by Planning Commission.

The Planning Commission may conduct public hearings and make determinations on whether alcohol establishments are in compliance with conditions of approval or operational standards prescribed in these regulations, and may modify, suspend or revoke an establishment's conditional use permit or deemed approved status in order to obtain compliance with the provisions of this Section. This Section is not intended to restrict the powers and duties otherwise pertaining to other City officers or bodies in the field of monitoring and ensuring the harmony of alcoholic beverage sale activities in the City. The Planning Commission shall have the powers and duties assigned to them by the Hesperia Municipal Code and by this Section.

E. Conditional use permit required for alcoholic beverage sales establishments that are new, modified, or redeveloped, or have deemed approved status revoked.

Notwithstanding the provisions of Section 16.12.315, no person shall establish a new alcohol establishment, nor shall any person modify or redevelop an existing alcohol establishment, without first obtaining a conditional use permit pursuant to Article III of Chapter 16.12 of Title 16. The requirements of this Section shall be in addition to any other requirements found in this Code and the Main Street and Freeway Corridor Specific Plan. A conditional use permit shall also be required for any deemed approved establishment when the deemed approved status is revoked in accordance with this Section.

F. Operational standards for alcohol establishments with conditional use permits.

Notwithstanding the provisions of Section 16.12.315, all new, modified, or redeveloped off-sale alcohol establishments, and deemed approved establishments when deemed approved status is revoked and a new conditional use permit is obtained, shall be designed, constructed, and operated to conform to all of the following operational standards:

1. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area, and will not aggravate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcoholic beverage sales to minors, noise and littering.
2. That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area and will not detrimentally affect nearby neighborhoods considering the distance of the alcohol establishment to residential buildings, schools, parks, playgrounds or recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug abuse recovery or treatment facilities, county social service offices, or other alcoholic beverages sales activity establishments.

3. That it does not result in repeated nuisance activities within the premises or associated with the establishment or activity, including but not limited to disturbance 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, littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, or lewd conduct. The establishment shall take all reasonable steps to include (1) immediately calling the police upon observation of the activity, and (2) requesting that those engaging in activities that constitute a nuisance or are otherwise illegal to cease those activities unless personal safety would be threatened in making the request.
4. That it complies with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code sections 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual City business license fees.
5. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
6. ~~That it complies with the following alcohol sale limitations:~~
 - ~~a. No sale of single-serve alcoholic beverages, including, but not limited to beer, malt liquor and alcoholic energy drinks of any size; wine of less than 750 ml in size; distilled spirits of less than 375 ml in size; or any other individual alcoholic beverage for single-serve consumption.~~
 - ~~b. No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window.~~
 - ~~c. No display, sale or distribution of beer or wine, wine coolers or similar alcoholic beverages shall be made from an ice tub, barrel or similar container.~~
 - ~~d. No display of alcoholic beverages closer than five feet from the store entrance.~~
 - ~~e. No beer, ale or malt liquor shall be offered for sale in a container with a volume greater than 32 ounces. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings.~~
7. That it complies with the following public nuisance prevention measures:
 - a. Lighting: Exterior areas of the premises and adjacent parking lots shall be provided with sufficient lighting in a manner that provides

adequate illumination for alcohol establishment patrons while not spilling onto surrounding residential and commercial properties. A photometric study may be required to demonstrate compliance.

- b. Litter: Adequate litter receptacles shall be provided in and around the premises. The premises shall be kept free of the accumulation of litter and shall be removed no less frequently than once each day the business is open.
- c. Loitering: The following measures may be required:
 - i. No fixtures or furnishings that encourage loitering and nuisance behavior are permitted on the premises **controlled by the establishment**. This includes, but is not limited to chairs, seats, stools, benches, tables, crates, ashtrays, pay phones, etc.
 - ii. The establishment's operators or employees shall be required to discourage loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so, **unless personal safety would be threatened in making the request**.
 - iii. No video or other electronic games shall be located in the establishment.
- d. Cups: The sale or distribution to the customer of paper or plastic cups in quantities less than their usual and customary packaging is prohibited.
- e. ~~Signage: There shall be no exterior advertising of alcoholic products, or tobacco and paraphernalia or similarly controlled products.~~
- f. Signs: The following signs shall be required to be prominently posted in a readily visible manner on an interior wall or fixture, and not on windows, in English, Spanish, and the predominant language of the patrons:
 - i. "California State Law prohibits the sale of alcoholic beverages to persons younger than 21 years of age."
 - ii. "No Loitering or Public Drinking."
 - iii. "It is illegal to possess an open container of alcohol in the vicinity of this establishment."
- g. Presentation of Documents: A copy of the conditions of approval and the California Department of Alcoholic Beverage Control license shall be required to be kept on the premises and presented to any

enforcement officer or authorized state or county official upon request. A copy of these operational standards (including any conditions of approval), any applicable ABC or City operating conditions, and any training requirements shall also be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

- h. Mitigating Alcohol Related Problems: The establishment shall be required to operate in a manner appropriate with mitigating alcohol related problems that negatively impact those individuals living or working in the neighborhood including but not limited to sales to minors, the congregation of individuals, violence on or near the premises, drunkenness, public urination, solicitation, drug-dealing, drug use, loud noise and litter.
- i. Drug Paraphernalia: An off-sale alcohol establishment shall be prohibited from selling drug/tobacco paraphernalia products as defined in Health and Safety Code sections 11014.5 and 11364.5. "Drug paraphernalia" means all equipment products and materials of any kind that are used intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the California Uniform Controlled Substances Act commencing with California Health and Safety Code section 11000.
- j. Window Obstructions: To ensure a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance, no more than ~~33~~ 45% of windows and entry doors shall be blocked by signs, vending machines, shelves, racks, storage, etc., notwithstanding the provisions of Section 16.36.040.
- k. ~~Training: Each off-sale operator and their employees shall complete the Responsible Beverage Service (RBS) Training component. To satisfy this requirement, a certified program must meet the standards of the Alcohol Beverage Control Responsible Beverage Service Advisory Board or other certifying/licensing body designated by the state of California. Proof of completion shall be submitted to the Hesperia police department or the San Bernardino Sheriff's Station serving Hesperia, as applicable.~~

- 8. Failure to comply with these requirements shall constitute grounds for revocation of a conditional use permit.

G. Additional Conditions of Approval

Additional conditions of approval that may be imposed as necessary on new, modified, or redeveloped alcohol establishments, and to deemed approved establishments when deemed approved status is revoked and a new conditional use permit is obtained include but are not limited to the following:

1. Program: A “complaint response community relations” program adopted and maintained by the establishment conducting the alcoholic beverage sales activity may be required. The program may include the following:
 - a. Posting at the entry of the establishment providing the telephone number for the watch commander of the police department to any requesting individual.
 - b. Coordinating efforts with the police department to monitor community complaints about the establishment activities.
 - c. Having a representative of the establishment meet with neighbors or the applicable neighborhood association on a regular basis and at their request attempt to resolve any neighborhood complaints regarding the establishment.
2. Hours of Operation: the sale of alcoholic beverages may be restricted to certain hours of each day of the week unless limited further by the State of California Department of Alcoholic Beverage Control.
3. Security Cameras: At least two high definition 24-hour time lapse security cameras may be required to be installed and properly maintained on the exterior of the building at locations recommended by the police department capable of color recording and storing a minimum of 30 days of continuous video. All criminal and suspicious activities recorded on this surveillance equipment must be reported to local law enforcement. To the extent allowed by law, the establishment operators may be required to provide any tapes or other recording media from the security cameras to the police department.
4. ~~Security Guards: An establishment may be required to retain a specified number of security guards. The number of security guards shall vary based upon the specific facts and circumstances of each establishment site and operation. All security guards shall have all required state and City permits and licenses.~~

H. Grounds for conditional use permit suspension, revocation or termination.

1. In addition to the grounds for revocation or modification of a conditional use permit contained in Section 16.12.130, an alcohol establishment's conditional use permit may be suspended for up to one year, modified or revoked by the Planning Commission after holding a public hearing in the manner prescribed in this Title, for failure to comply with operational standards, training requirements or conditions of approval imposed through their conditional use permit. Notice of such hearing by the Planning

Commission at which it will consider the modification, suspension or revocation of an establishment's conditional use permit shall be in the manner prescribed by this Title.

2. In addition to any and all other provisions of this Section, any conditional use permit shall terminate and cease to apply to any establishment when either of the following has occurred:

- a. The alcohol establishment has ceased its operation for a period of 12 or more calendar months, and when either one of the following events occur:

- i. If, after the 12 calendar months, any application or requested transaction with the California Department of Alcoholic Beverage Control, whereby the laws of the state of California require notice thereof to be filed with the City, and allow the filing of a protest thereon by the City (including person-to-person transfer of existing licenses), and the City has filed such protest; or
- ii. If after such 12-calendar-month period, the existing license shall have ceased to apply to such establishment.

- b. Surrendered its license to the California Department of Alcoholic Beverage Control for a period exceeding 12 calendar months.

I. Automatic deemed approved status for existing alcohol establishments.

1. As of the Effective Date, all existing alcohol establishments, whether permitted, conditionally permitted or legal nonconforming, shall automatically become deemed approved establishments, and shall no longer be considered permitted, conditionally permitted or legal nonconforming establishments. Each deemed approved establishment shall retain its deemed approved status as long as it complies with the deemed approved operational standards set forth in Section 16.16.370(J).
2. The City shall notify the owner and/or operator of an alcohol establishment of its deemed approved status at the address as shown on their City business license, and also, if not the same, any property owner at the address shown on the county assessor's property tax assessment records, of the establishment's deemed approved status. The notice shall be sent by first-class mail and certified mail return receipt requested and shall include a copy of the operational standards in this Section with the requirement that they be posted in a conspicuous and unobstructed place visible from the entrance of the alcohol establishment for public review. Should the notice be returned, then the notice shall be sent via regular mail. Failure of any person to receive notice given pursuant to this Section shall not affect the deemed approved status of the establishment.

J. Operational standards for alcohol establishments with deemed approved status.

After the Effective Date, a deemed approved establishment shall retain its deemed approved status only if it conforms to all of the following deemed approved operational standards:

1. The deemed approved establishment shall not cause adverse effects to the health, peace or safety of persons residing or working in the surrounding area.
2. The deemed approved establishment shall not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.
3. The deemed approved establishment shall not allow repeated nuisance activities within the premises or associated with the establishment or activity, including but not limited to disturbance 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, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, or lewd conduct. ~~The establishment shall take all reasonable steps to include (1) immediately calling the police upon observation of the activity, and (2) requesting that those engaging in activities that constitute a nuisance or are otherwise illegal to cease those activities unless personal safety would be threatened in making the request.~~
4. The deemed approved establishment shall comply with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code sections 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual City business license fees.
5. The deemed approved establishment's upkeep and operating characteristics shall be compatible with and not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
6. A copy of these deemed approved operational standards, any applicable ABC or City operating conditions, and any training requirements shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.
7. ~~The owners and all employees of the deemed approved establishment who are involved in the sale of alcoholic beverages shall complete an approved course in "Responsible Beverage Sales" (RBS) within 60 days of hire for employees hired after the Effective Date or within six months of the Effective Date for existing employees. To satisfy this requirement, a certified program must meet the standards of the California Coordinating Council on~~

~~Responsible Beverage Service (CCC/RBS) or other certifying/licensing body designated by the state of California.~~

K. Grounds for deemed approved status suspension, revocation or termination.

1. An alcohol establishment's deemed approved status may be suspended for up to one year, modified or revoked by the Planning Commission after holding a public hearing, for failure to comply with the deemed approved operational standards set forth in Section 16.16.370(J). Notice of such hearing by the Planning Commission at which it will consider the modification, suspension or revocation of an establishment's deemed approved status shall be in writing and shall state the grounds therefore. Notice shall be mailed by first-class mail and certified mail return receipt requested at least 10 days before the date of the hearing.
2. The occurrence of any of the following shall terminate the deemed approved status of the alcohol establishment after notice and a hearing in front of the Planning Commission, and require the application for and issuance of a conditional use permit in order to continue the alcoholic beverage sales activity:
 - a. An existing alcohol establishment changes its activity so that ABC requires a different type of license.
 - b. There is a substantial modification to the mode or character of operation, including but not limited to the following:
 - i. The deemed approved establishment increases the floor or land area or shelf space **by more than 25% that is** devoted to the display or sales of any alcoholic beverage.
 - ii. The deemed approved establishment extends the hours of operation.
 - iii. The deemed approved establishment proposes to reinstate alcohol sales after the ABC license has been either revoked or suspended for a period 12 months or greater by ABC.
 - iv. The deemed approved establishment voluntarily discontinues active operation for more than 12 consecutive months or ceases to be licensed by the ABC.
 - c. A "substantial change in the mode of character of operation" shall not include:
 - i. Re-establishment, restoration or repair of an existing deemed approved establishment on the same premises after the premises have been rendered totally or partially inaccessible by a riot, insurrection, toxic accident or act of God, provided that the re-establishment, restoration or repair does not extend the hours of operation of any establishment or add to

the capacity, floor or land area or shelf space devoted to alcoholic beverages of any establishment.

- ii. Temporary closure for not more than twelve months in cases of vacation or illness or for purposes of repair, renovation, or remodeling if that repair, renovation, or remodeling does not change the nature of the premises and does not extend the hours of operation of any establishment, or add to the capacity, floor or land area, or shelf space devoted to alcoholic beverages of any establishment, provided notice is provided to the City. The Development Services Director may, upon request of an owner of a deemed approved establishment made prior to the expiration of twelve months, grant one or more extensions to the period of temporary closure, in accordance with Section 16.12.315(F).

- d. There has been a discontinuance of active operation for 12 consecutive months or a cessation of ABC licensing, which shall be presumed to be abandonment of the use by the property owner. At any time after any active operation is discontinued for a period of 12 consecutive months or more, the City Manager's designee shall notify the property owner in writing of the determination of presumed abandonment of the active operation. Pursuant to Chapter 16.12 of this Title, the property owner may appeal the determination to the Planning Commission, which may overturn the determination only upon making a finding that the evidence supports the property owner's position that the use was not discontinued for a period of 12 consecutive months or more.

L. Violations; Enforcement.

- 1. In addition to the penalties provided in this Section, this Section shall be enforced pursuant to Chapter 1.12 of the Hesperia Municipal Code.
- 2. It is not the intent of this Section to discourage owners and employees of alcohol establishments to report nuisance or criminal activity. Nuisance or criminal activity that is reported by owners and employees shall not be considered for the purposes of revoking a conditional use permit or deemed approved status.

M. Annual alcohol sales regulatory fee.

- 1. The intent and purpose of this Section is to impose a regulatory fee upon all off-sale alcohol establishments that either hold deemed approved status pursuant to this Section or obtained a conditional use permit after the Effective Date. This fee shall provide for the enforcement and administration of the conditions of approval, operational standards, and other applicable regulations set forth in this Section with regard to off-sale alcohol establishments.

2. The regulatory fee shall be established by resolution of the City Council, and may include an annual component and a compliance component. The fee shall be calculated so as to recover the total cost of both administration and enforcement of the operational standards and other applicable regulations set forth under this Section upon all off-sale alcohol establishments that either hold deemed approved status pursuant to this Section or obtained a conditional use permit after the Effective Date, including, for example, notifying establishments of their deemed approved status, administering the program, establishment inspection and compliance checks, documentation of violations, conducting hearings and prosecution of violators, but shall not exceed the cost of the total program. All fees shall be used to fund the program. Fees are nonrefundable except as may be required by law."

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

SECTION 3. This Ordinance shall be effective thirty (30) days after its adoption.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of the same to be published in a manner prescribed by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Hesperia, California, at a regular meeting held on this ___ th day of _____, 2016.

_____, Mayor

ATTEST:

Melinda Sayre, City Clerk