

# ATTACHMENT A

Ordinance No. 2450

## ORDINANCE NO. 2450

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VICTORVILLE APPROVING AMENDMENT CASE PLAN22-00002, AN AMENDMENT TO THE VICTORVILLE MUNICIPAL CODE WITH AN ENVIRONMENTAL EXEMPTION MAKING VARIOUS CHANGES TO TITLE 16 TO REGULATE THE RETAIL SALE OF ALCOHOL AND TOBACCO FOR OFF-SITE CONSUMPTION CITYWIDE BY UPDATING EXISTING OPERATING STANDARDS AND INTRODUCING NEW OPERATING STANDARDS APPLICABLE TO NEW, EXISTING, AND DEEMED APPROVED BUSINESSES WITHIN THE CITY OF VICTORVILLE, WHICH INCLUDE BUT ARE NOT LIMITED TO STANDARDS RELATING TO PROPERTY MAINTENANCE, ALCOHOL AND TOBACCO DISPLAY AREA, ALCOHOL AND TOBACCO SIGNAGE, TOBACCO PARAPHERNALIA, AND THE PROHIBITED SALES OF SINGLE-SERVE ALCOHOLIC BEVERAGES AND DRUG PARAPHERNALIA, AS WELL AS INITIAL AND ANNUAL COMPLIANCE INSPECTION AND LICENSING PROCESSES**

**WHEREAS**, Pursuant to Article XI, Section 7 of the California Constitution, the City of Victorville (City”) is authorized to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, Pursuant to Title 7, Division 1, Chapter 4, Article 2, Section 65850 of the Government Code of the State of California, the City may adopt by ordinance regulations affecting: the use of buildings, structures and land as between industry, business, residences, open space, including agriculture recreation, enjoyment of scenic beauty, use of natural resources, and other purposes; regulations of signs and billboards; the size of lots, yards, courts and other open spaces; and the intensity of land uses; and

**WHEREAS**, Pursuant to Title 7, Division 1, Chapter 4, Article 2, Section 65850 of the Government Code of the State of California, the City has adopted Title 16, Chapter 2, Article 1, Section 16-2.01.010 of the Victorville Municipal Code, providing the authority to amend Title 16 of the Victorville Municipal Code and the various regulations, requirements, exceptions and guidelines located therein; and

**WHEREAS**, Pursuant to Title 7, Division 1, Chapter 4, Article 2, Section 65860 of the Government Code of the State of California, the City of Victorville Zoning Ordinance shall be amended to be consistent with the General Plan within reasonable time; and

**WHEREAS**, Pursuant to Section 16-2.01.020 of the Victorville Municipal Code, the City of Victorville has initiated amendments to Title 16 of the Victorville Municipal Code in order to modify Title 16 of the Victorville Municipal Code (the “Development Code”) in a manner that will allow for proactive enforcement of State and local alcohol and tobacco regulations and requirements; and

**WHEREAS**, Pursuant to Title 7, Division 1, Chapter 4, Article 2 of the Government Code, State of California and Section 16-2.01.040 of a Victorville Municipal Code, the Victorville

Planning Commission opened a public hearing on March 13th, 2024, and closed the public hearing on May 8, 2024 to hear arguments for and against the proposed amendments to the Development Code; and after hearing all testimony offered; the Victorville Planning Commission adopted Resolution No. P-24-005, which recommended to the City Council the adoption of Municipal Code amendments specified in Planning Case No. PLAN22-00002; and

**WHEREAS**, the City Council previously adopted Ordinance No. 2299 on June 18, 2013, that established the prohibition of single-serve alcohol sales for any new business seeking approval to sell alcoholic beverages for off-site consumption; and

**WHEREAS**, the City Council previously adopted Ordinance No. 2324 on October 7, 2014, that: required most existing and new business selling alcoholic beverages to obtain a discretionary conditional use permit; instituted limited exceptions for the issuance of a Finding of Public Convenience or Necessity in census tracts overconcentrated with licenses to sell alcohol as determined by the California Department of Alcoholic Beverage Control; added distance requirements for the placement of establishments selling alcoholic beverages in relation to the location of sensitive uses such as residentially zoned property, schools, religious facilities, and parks/playgrounds; and introduced design and operating standards for businesses selling alcohol for off-site consumption aimed at public nuisance prevention that include requirements such as sufficient lighting, adequate refuse collection, discouragement of loitering, signage limitations, prohibited sale of drug paraphernalia, site maintenance, and sufficient employee training; and

**WHEREAS**, the City Council previously adopted Ordinance No. 2339 on August 18, 2015, that: established that retail tobacco and tobacco paraphernalia sales would only be possible at locations permitted to sell alcohol for off-site consumption and regulated the display of tobacco products as well as prohibited smoking or vaping on the business premises and the sale of drug paraphernalia; and prohibited any new smoke shops or smoking lounges within the City of Victorville; and

**WHEREAS**, the City Council made extensive findings when adopting Ordinance Nos. 2299, 2324, and 2339, that the City Council continues to find applicable and valid, and which include findings that:

- Additional regulatory measures are needed to protect residential, commercial, industrial, and civic uses from the harmful effects attributable to the sale of alcoholic beverages; and
- Neighborhood character can change over time and the careful regulation of nuisance activity by on-site and off-site alcohol uses will help to ensure that such uses do not contribute to the deterioration of neighborhoods; and

- Land use regulations can be structured to provide opportunities for alcoholic beverages sales establishments to operate in a mutually beneficial relationship to each other and to other commercial services while not becoming the source of undue public nuisances in the community; and
- Prohibiting and regulating certain land uses will assist on creating a safer community by eliminating the ability of certain harmful businesses to locate in Victorville, thus deterring the patrons of these business from loitering in retail areas which may occur due to the nature and operations of certain land uses; and
- There is a need to prohibit and regulate certain land uses by Ordinance in order to help achieve the City Councils goals of creating a safer, prettier and cleaner community; and
- Prohibiting and regulating certain uses in commercial neighborhoods will create a prettier, cleaner community by keeping undesirable businesses out of commercial areas and attracting desirable businesses and owners to commercial neighborhoods; and
- The failure of tobacco retailers to comply with tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of Victorville; and

**WHEREAS**, on January 1, 2023, California Senate Bill 793 became effective and prohibits tobacco retailers from selling, offering to sell, or possessing flavored tobacco products; excepting for hookah tobacco, loose leaf tobacco, and handmade premium cigars; and

**WHEREAS**, on January 1, 2024, California Assembly Bill 935 became effective and strengthened the California flavored tobacco products prohibition by establishing the California Department of Public Health (CDPH) as the primary state enforcement agency, increased penalties for retailers who do not comply with the law, and changed the definition of a retail location to include mobile units such as booths and stands; and

**WHEREAS**, the City Council finds that the proposed Victorville Municipal Code Amendment will further consistency with the General Plan in compliance with Title 7, Division 1, Chapter 4, Article 2, Section 65860 of the of California Government Code since the Land Use Element of the General Plan includes Policy LU-N.7 requires that properties are adequately maintained, both for safety and aesthetic reasons, by encouraging voluntary compliance whenever possible, and utilizing Code enforcement as necessary, which the proposed amendment will address due to the inclusion of an annual inspection process for applicable alcohol sales establishments and tobacco retailers; and

**WHEREAS**, the City Council finds that the proposed amendments to Title 16 of the Victorville Municipal Code (also known as the “Development Code”) relating to tobacco sales are

necessary to comply with current State laws and ensure business locations are adequately maintained as required by the General Plan; and

**WHEREAS**, the City Council finds that local tobacco control laws that provide for the suspension or revocation of local licenses for the violation of California tobacco control laws are authorized pursuant to Section 22971.3 of the California Business and Professions Code; and

**WHEREAS**, the City Council finds that current operating standards required by the Development Code for businesses selling alcohol and tobacco for off-site consumption are currently limited to enforcement during initial business opening without a means to ensure ongoing compliance; and

**WHEREAS**, the City Council finds that ongoing compliance inspections and an associated violation schedule is necessary to ensure compliance with existing and proposed operating standards and/or performance standards for applicable business engaging in sale of alcohol and tobacco for off-site consumption due to the potential for non-compliance and a changing marketplace with evolving technologies and alcohol and tobacco products; and

**WHEREAS**, the City Council finds that proposed Development Code amendments relating to new and updated definitions are necessary for clarity and to facilitate implementation of the proposed compliance inspections; and

**WHEREAS**, the City Council finds on their own independent judgment that this project is exempt from the California Environmental Quality Act (CEQA) based upon CEQA Guidelines Section 15061(b)(3), as there is no possibility that the proposed amendment will have a significant effect on the environment inasmuch as the proposed amendment will adopt operating standards, annual inspection and licensing procedures, and other standards that will not: directly impact the environment; modify existing codes in a manner that is inconsistent with the General Plan; or allow development without its own specific environmental review process in accordance with CEQA; and

**WHEREAS**, Pursuant to Title 7, Division I, Chapter 4, Article 2 of the Government Code of the State of California and Section 16-2.01.060 of the Victorville Municipal Code, a duly noticed Public Hearing was held by the City Council on the 18th day of June, 2024 to hear arguments for and against the code amendments, and after hearing all verbal and written testimony offered, including the Planning Commission's recommendation and minutes, and after thoroughly reviewing and considering the code amendments, the City Council approved the recommendation of the Planning Commission; and

**WHEREAS**, the City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a

court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

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

**Section 1. Recitals**

The recitals set forth above are true and correct, and are hereby incorporated by this reference as if set forth in their entirety.

**Section 2. Certification**

The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published according to law.

**Section 3. Additions, Deletions, and Revisions of Various Sections of Title 16 to the Victorville Municipal Code**

Title 16 of the Victorville Municipal Code is hereby amended as described within Exhibit “A” (with included legend defining editing notes as well as existing, new, and deleted text by means of underscores, strikethroughs, and italicization for reference only).

## Exhibit “A”

Legend
Existing Text
<del>Deleted Text</del>
<i>Revised Text</i>
<u>New Text</u>
{Editing Notes}

### Chapter 1: Development Department Article 3: Definitions

#### Section 16-1.03.010: - Definitions

##### Arm's length transaction

means a sale of a tobacco retailer location or business in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of violations of the Development Code is not an arm's length transaction.

##### Alcoholic Beverage

means any liquid or solid containing alcohol, spirits, liquor, 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.

##### Alcoholic beverage, single-serve

means an alcoholic beverage, as defined in this Section, that is packaged for sale in single unit quantities described as: individual containers of beer, malt liquor and alcoholic energy drinks of any size; individual containers of wine of less than 750 ml in size; individual containers of distilled spirits of less than 375 ml in size; or any other individual container of alcoholic beverage for single-serve consumption.

This definition does not include:

- (i) beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings; or
- (ii) alcoholic beverages sold in manufacturers pre-packaged multi-unit quantities to include: wine in bottles or containers smaller than 750 ml; individual containers of distilled spirits of less than 375 ml in size; wine coolers, beer, malt liquor and alcoholic energy drinks in containers of any size; and/or any other individual alcoholic beverage for single-serve consumption.

Alcoholic beverage sales establishment

including “alcohol sales establishment” or “alcoholic beverage establishment”, means an establishment that conducts sales of alcoholic beverages for consumption on or off the premises where sold and is licensed by the ABC for the retail sale of alcoholic beverages for on-site or off-site consumption

Alcoholic beverage sales establishment, nonconforming

means any alcoholic beverage sales establishment that does not conform to the regulations of this Title, and for which a valid ABC license had been issued and used in the exercise of the rights and privileges conferred by the license, which lawfully existed at the time the regulations with which it does not conform became effective, regardless of whether such establishment was allowed as part of a conditional use permit granted prior to the time the regulations with which it does not conform became effective. Such an establishment shall be considered a deemed approved establishment and shall no longer be considered a legal nonconforming use.

On-site alcoholic beverage establishment

Alcoholic beverage establishment, on-site

means an establishment that conducts sales of alcoholic beverages for consumption on the premises where sold.

Off-site alcoholic beverage establishment

Alcoholic beverage establishment, off-site

means an establishment that conducts retail sales of alcoholic beverages for consumption off the premises where sold.

California Department of Alcoholic Beverage Control or ABC

means the department of the state of California empowered to act pursuant to Article XX, Section 22, of the California Constitution and authorized to administer the provisions of the Alcoholic Beverage Control Act

Deemed approved establishment

Including “deemed approved alcohol sales establishment” means any nonconforming alcoholic beverage sales establishment as defined in this Section. Such establishment shall be considered a deemed approved establishment effective on the date the regulations with which it does not conform became effective.

Deemed approved status

means the permitted use of land for a deemed approved establishment that conducts retail sales of alcoholic beverages for consumption off the premises where sold. Deemed approved status replaces nonconforming status for off-site alcohol establishments and remains in effect as long as the deemed approved establishment complies with the applicable performance standards and other deemed approved regulations provided in the Development Code.

Drug paraphernalia

as defined in California 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 (as defined in California Health and Safety Code Section 11054 et seq.) in violation of the California Uniform Controlled Substances Act, commencing with California Health and Safety Code section 11000.

#### Electronic smoking product and/or device

(also known as "electronic cigarette," "e-cigarette," "electronic nicotine delivery system," "e-cigar," "e-cigarillo," "e-pipe," "e-hookah," "hookah pen," "vape pen" etc.) is a battery operated device used to inhale a aerosolized or vaporized substance that frequently, though not always, contains nicotine. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device. The sale of electronic smoking products and devices are hereby regulated by the Victorville Municipal Code in the same manner as tobacco product and paraphernalia sales. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

#### Person

means any natural person, partnership, cooperative association, corporation, joint venture, limited liability company, personal representative, receiver, trustee, assignee, or any other legal entity or combination of the foregoing acting as a single unit.

#### Proprietor

means a person with an ownership or managerial interest in a business. An "ownership interest" shall be found to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A "managerial interest" shall be found to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

#### Smoke shop

an establishment that either devotes more than 10 percent of its total floor area to tobacco products, including paraphernalia, or devotes more than a 2 foot depth by 4 foot length section of a single shelf space for display for sale of tobacco paraphernalia.

#### Tobacco paraphernalia

shall mean any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco or tobacco products. Items or devices classified as tobacco paraphernalia include but are not limited to the following: cigarette papers or wrappers, blunt wraps as defined in Section 308 of the California Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products, including electronic smoking products and/or devices. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.

## **Tobacco product**

shall mean any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. Tobacco product includes any component, part, or accessory used to enable human consumption of tobacco or nicotine, regardless of if that product contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and tobacco paraphernalia as defined in this Section. For purposes of the Development Code, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

## **Tobacco product coupon**

means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

## **Tobacco product, flavored**

means any tobacco product that imparts a taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, either prior to or during the consumption of such tobacco product, including but not limited to tastes or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or a cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product.

## **Tobacco product, presumptive flavored**

Means any communication by or on behalf of the manufacturer or retailer of a tobacco product that such tobacco product imparts a taste or odor other than the taste or odor of tobacco, or that imparts a cooling or numbing sensation, constitutes presumptive evidence that the tobacco product is a flavored tobacco product. This includes but is not limited to public statements that a product has a minty or cooling effect, such as describing the product as "chill," "ice," "fresh," "arctic," or "frost."

## **Tobacco retailer establishment**

Including "tobacco retailer" means any establishment that sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, tobacco paraphernalia, or any electronic smoking product and/or device. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. This definition shall not include wholesales or distributors not authorized to engage in retail sales of tobacco products directly to consumers.

## **Tobacco retailer establishment, nonconforming**

means any tobacco retailer that does not conform to the regulations of the Development Code, and which lawfully existed at the time the regulations with which it does not conform became effective.

Tobacco retailer license (TRL)

means the license required to be obtained and maintained by a tobacco retailer establishment as required in Article 7, Chapter 3 of the Development Code.

{Position new/revised definitions in alphabetical order within existing definitions table}

## Chapter 3: Zoning and Land Use Requirements

### Article 7: Land Use and Special Requirements

#### Section 16-3.07.010: - Permitted and conditional land uses – All zoning districts

T Y P E	USE	ZONE																
		AE	A	SR	R1	R2	R3	R4	MDR	RMPD	C1	C2/ C4	CA	CM	IPD	M1	M2	PC
COMMERCIAL	<b>14) ALCOHOL</b>																	
	Alcoholic beverage sales for consumption on-site or off-the premises site (See Sec. 16-3.07.02015- alcohol sales)	-	-	-	-	-	-	-	-	-	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C
	<b>25) TOBACCO</b>																	
	Tobacco sales (See Sec. 16-3.07.020; Tobacco product and paraphernalia sales requirements)																	

{Delete “Tobacco” Land Use – Renumber Uses 26) through 32) as 25) through 31) accordingly}

T Y P E	USE	ZONE																
		AE	A	SR	R1	R2	R3	R4	MDR	RMPD	C1	C2/ C4	CA	CM	IPD	M1	M2	PC
COMMERCIAL	<b>30) ACCESSORY USES (Subject to Sections 16-3.07.030 &amp; 16-3.07.040 of the V.M.C.)</b>																	
	<u>Tobacco sales (See Sec. 16-3.07.015)</u>	=	=	=	=	=	=	=	=	=	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

{Add Accessory Use – Position in alphabetical order within existing list of accessory uses}

#### Section 16-3.07.020: - Special requirements for certain permitted and conditional uses

{Remove subsections (a) “Alcohol sales” and (k) “Tobacco product and paraphernalia sales requirements” in their entirety; reassign remaining subsections as (a) through (j) accordingly.}

**Section 16-3.07.015: - Special requirements and regulations for alcoholic beverage sales establishments and tobacco retailers**

Because the use of alcohol and tobacco are restricted for use by adults twenty-one years of age or older and in an effort to prevent minors from accessing alcohol or tobacco, as well as to ensure alcoholic beverage establishments and tobacco retailers do not negatively impact neighboring properties and businesses, the City of Victorville ("City") has developed minimum standard licensing and operating requirements. These requirements implement an annual inspection process applicable to the majority of the off-site alcoholic beverage establishments and tobacco retailers operating within the City, and are provided in order to help ensure these uses are not injurious to the health, safety and welfare of the community.

(a) Alcoholic beverage sales

This Section requires conditional use permits for new alcoholic beverage sales establishments, unless otherwise exempt; confers "deemed approved" status on all legal nonconforming off-site alcoholic beverage establishments; provides regulations for the continued operation of off-site alcoholic beverage sales establishments; sets forth grounds for the modification, revocation and termination of conditional use permits and deemed approved status for establishments violating the provisions of this Section; and outlines investigation and hearing procedures for addressing violations to protect the general health, safety, and welfare of the residents and businesses in the City and to prevent nuisance activities where alcoholic beverage sales occur.

(1) Purposes and Intent

(i) The specific purposes for enacting this Section are as follows:

- a. To protect residential, commercial, industrial, civic and religious land uses and minimize the adverse impacts of nonconforming and incompatible uses;
- b. To provide regulations to address problems associated with the public consumption of alcoholic beverages such as litter, loitering, graffiti, unruly behavior, violence, vandalism, and escalated noise levels, and ensure that alcoholic beverage sales establishments do not become the source of undue public nuisances in the community;
- c. To provide for properly maintained alcoholic beverage sales establishments so that the secondary effects of negative impacts generated by these activities on the surrounding environment are mitigated;
- d. To monitor deemed approved establishments to ensure they do not substantially change in mode or character of operation; and
- e. To provide opportunities for alcoholic beverage sales establishments to operate in a mutually beneficial relationship to each other and to other surrounding uses.

(ii) This Section does not itself authorize or permit alcoholic beverage sales establishments, but only applies to such establishments where otherwise allowed or permitted within an applicable zoning district. The requirements and regulations set forth herein are intended to complement California's alcohol-related laws and the City does not intend to replace or usurp any powers vested in the California Department of Alcoholic Beverage Control (ABC).

(2) Administration

(i) Applicability.

- a. The provisions of this Section shall apply to the extent permissible under other laws to all establishments located in the City that sell alcoholic beverages for on-site or off-site consumption.
- b. 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.

(ii) Planning Commission public hearings

- a. The Planning Commission may conduct public hearings and make determinations on whether alcoholic beverage sale establishments are in compliance with conditions of approval, operational standards, or the deemed approved performance standards prescribed within this Section, and may modify or revoke an alcohol sales establishment's conditional use permit or deemed approved status in order to obtain compliance with the provisions of this Section. This provision 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 it by the Development Code, the Victorville Municipal Code, and by this Subsection 16-3.07.015(a).
  - 1. Any action taken by the Planning Commission shall not cause any associated business license to be modified, suspended, or revoked, unless otherwise authorized pursuant to Chapter 7, Article 2 of this Title.

(iii) Inspection and right of entry

- a. The sale of alcoholic beverages is a closely regulated industry. The officials responsible for enforcement of the Victorville Municipal Code or other ordinances of the City, or their duly authorized representatives, may enter on any site or into any structure for the purpose of inspection, provided they do so in a reasonable manner and in accordance with the procedures in Section 16-6.01.050 of this Title, whenever they have cause to suspect a violation of these regulations, or whenever necessary to the investigation of violations of the conditions of approval, operational standards, or the deemed approved performance standards prescribed in Subsection 16-3.07.015(a)(5)(iii) of this Section. Inspections not otherwise based on cause to suspect a violation shall only be conducted at the intervals and in the manner prescribed within Subsection 16-3.07.015(c)(1) of this Section.
- b. Any and all such inspections shall further be conducted in compliance with the Fourth Amendment to the United States Constitution.

(3) Requirements and standards.

(i) Conditional use permit required

- a. Except as provided in Subsections b., c., and d. below, all alcoholic beverage establishments to which this Chapter is applicable shall obtain a conditional use permit pursuant to Article 2 of this Chapter and satisfy all conditions as set forth in any applicable law or regulation, including any law or regulation of the Victorville Municipal Code, in any entitlement, and in any license issued, prior to engaging in any alcoholic beverage sales activity.
- b. Unless otherwise required by this Chapter, a conditional use permit shall not be required of an off-site alcoholic beverage sales establishment consisting of a general retail store, a grocery store, or a retail pharmacy with greater than 8,000 square feet of gross floor area and a maximum of 10 percent of the gross floor area devoted to the sale and display of alcoholic beverages. If found to be in violation of this Chapter, such alcoholic beverage establishments exempt from the requirement of a conditional use permit pursuant to this Subsection can lose their exemption pursuant to the business license revocation procedures provided in Chapter 7 of this Title. If such revocation is granted, such establishment will need to comply with obtaining a conditional use permit prior to continuing the sale of alcoholic beverages.
- c. Unless otherwise required by this Chapter, a conditional use permit shall not be required of a restaurant, as defined in Section 16-1.03.010 of this Title, that serves alcoholic beverages for on-site consumption, limited to on-sale beer and wine, non-fortified products only.
- d. Unless otherwise required by this Chapter, a deemed approved establishment operating in accordance with the deemed approved performance standards in Subsection 16-3.07.015(a)(5)(iii) and otherwise maintaining deemed approved status shall not be required to obtain a conditional use permit.

(ii) Finding of public convenience or necessity

- a. Pursuant to California Business and Professions Code Section 23958.4, in areas with an over-concentration of off-site alcoholic beverage establishment licenses issued by the ABC, the City desires to strike a balance between the number of off-site licenses and the convenience of store customers. As a result, consideration to approve a finding of public convenience or necessity may be given by the City Council, Planning Commission, or Zoning Administrator, as applicable, to businesses wishing to obtain off-site alcoholic beverage establishment licenses issued by the ABC in over-concentrated areas that comply with the following criteria:
  - 1. The retailer must occupy greater than 8,000 square feet of gross floor area or be tied to a fueling station on the premises with fuel sales comprising the majority of the business's sales;
  - 2. A retailer tied to a fueling station with less than 8,000 square feet of gross floor area shall be limited to off-site beer and wine, non-fortified products only;
  - 3. No more than 10% of the floor area may be devoted to alcoholic beverage display, unless a larger percentage of display is otherwise approved by the Planning Commission;
  - 4. At least 10% of the floor area must be devoted to food sales and non-alcoholic beverages;

5. If location of the proposed business is within a high crime area, which is defined as Police Department calls for service for alcoholic beverage-related incidents of 20% greater than the average number of such incidents reported for the City as a whole, the hearing body may use that fact in denying the application or the Public Convenience or Necessity finding required by the ABC;
  6. The property/building/use has no outstanding Building or Health Code violations or Code Enforcement activity;
  7. The site is properly maintained, including building improvements, landscaping, and lighting; and
  8. The owner/applicant has no history of violations with the ABC and/or City of Victorville.
- b. Prior to the establishment of any business selling alcoholic beverages, when within the Zoning Administrator's purview, the Zoning Administrator, when required pursuant to California Business and Professions Code Section 23958.4 shall make the finding of public convenience or necessity. Prior to making said finding, the Zoning Administrator shall consult with the City Police Department to receive that agency's comments. If the comments received indicate concerns, the Zoning Administrator shall not make the finding, but shall require the applicant to submit an application for a conditional use permit for Planning Commission review, when not otherwise required.
- c. If any other discretionary approvals are required, the public convenience or necessity finding shall be incorporated into the process for such discretionary approval review.

(iii) Distance requirements

- a. No off-site alcoholic beverage establishment shall be located within 600 feet of residentially zoned property, public or private schools, religious facilities, or parks or playgrounds, except:
1. A general retail store, or grocery store, or retail pharmacy with greater than 8,000 square feet of gross floor area and a maximum of 10 percent of the gross floor area devoted to the sale and display of alcoholic beverages, unless a larger percentage of display is otherwise approved by the Planning Commission; or
  2. A convenience market, as defined in Section 16-1.03.010 of this Title, with a maximum of 10 percent of the retail display area devoted to the sale and display of alcoholic beverages, limited to off-site beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers.
- b. No bar/nightclub, as defined in Section 16-1.03.010 of this Title, that sells alcoholic beverages for on-site consumption shall be located within 600 feet of residentially zoned property, public or private schools, religious facilities, or parks or playgrounds. A micro-brewery, licensed and classified by the ABC as a Small Beer Manufacturer (License Type 23), or a billiard parlor as defined in Section 16-1.03.010 of this Title, shall not be considered a bar/ nightclub.
- c. For purposes of this Subsection, distances shall be measured between the closest property lines of the affected locations.



(iv) Operational standards; additional conditions of approval

- a. All new off-site alcoholic beverage establishments (those established on or after [the effective date of this ordinance]) shall be designed, constructed, and operated to conform with all of the following operational standards and alcoholic beverage sales limitations:
1. An establishment shall not result in adverse effects to the health, peace, or safety of persons residing or working in the surrounding area.
  2. An establishment shall be prohibited from selling single-serve alcoholic beverages as follows:
    - i. Individual containers of beer, malt liquor and alcoholic energy drinks of any size; individual containers of wine of less than 750 ml in size; individual containers of distilled spirits of less than 375 ml in size; or any other individual container of alcoholic beverage for single-serve consumption. This restriction shall not be required of an establishment consisting of a general retail store, a grocery store, or a retail pharmacy with greater than 8,000 square feet of gross floor area. 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.
    - ii. Wine in bottles or containers smaller than 750 ml; individual containers of distilled spirits of less than 375 ml in size; wine coolers, beer, malt liquor and alcoholic energy drinks in containers of any size; and/or any other individual alcoholic beverage for single-serve consumption shall only be sold in the manufacturer's pre-packaged multi-unit quantities.
      - A. The above single-serve restrictions do not apply to off-site alcoholic beverage sales establishments that are: exempt from obtaining a Conditional Use Permit pursuant to Subsection 16-3.07.015(a)(3)(i); or existing establishments selling alcoholic beverages for off-site consumption with an active ABC beer, wine or liquor license established prior to July 18, 2013 (the effective date of Ordinance No. 2299), unless the ABC license has lapsed for 90 or more consecutive days; or the establishment was originally prohibited from selling single-serve alcoholic beverages through a Conditional Use Permit, a Finding of Public Convenience or Necessity and/or through an ABC license.
  3. An establishment shall not result in nuisance activities within the premises or on adjacent properties or roadways, 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, lewd conduct, sales to minors or police detentions and arrests that were not otherwise mitigated during the early stages of disturbance.
  4. An establishment shall comply with all provisions of local, state or federal laws, regulations or orders, including without limitation, those of the ABC; California Business and Professions Code sections 24200, 24200.6, 25612, and 25612.5; as well as any condition imposed on any permits issued pursuant to such applicable laws, regulations or orders. This includes payment of annual City business license fees.
  5. The premises upkeep and operating characteristics shall be compatible with and shall not adversely affect the livability or appropriate development of abutting

properties and the surrounding neighborhood.

6. An establishment shall comply with the following public nuisance prevention measures:

- i. Lighting: Exterior areas of a single-tenant or multi-tenant property, including but not limited to parking lots, driveways, circulation areas, passageways, recesses, and grounds contiguous to buildings, shall be provided with sufficient illumination levels to make clearly visible the presence of any persons on or about the premises from dusk to dawn in order to provide a safe, secure environment for all persons, property, and vehicles on-site. A minimum of 0.5 foot candle of illumination shall be maintained at any land surface point throughout the area to be illuminated. The overall area to be illuminated on-site shall have a minimum average of 2 foot candles at the land surface. Where a light source is directed to emanate horizontally and is visible from outside the property boundary, shielding shall be required to reduce glare to the greatest degree practicable.
- ii. Litter: Adequate litter receptacles shall be provided on site and in the building. 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.
- iii. Loitering: 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.
- iv. Signage: There shall be no exterior advertising of alcoholic products, or tobacco and paraphernalia or similarly controlled products in excess of the signage allowances provided by the California Business and Professions Code and Article 22 of this Chapter.
- v. 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 and Spanish:
  - A. "California State Law prohibits the sale of alcoholic beverages to persons under 21 years of age."
  - B. "No Loitering or Public Drinking."
  - C. "It is illegal to possess an open container of alcohol in the vicinity of this establishment."
- vi. Mitigating Alcohol Related Problems: The establishment shall be required to operate in a manner which mitigates alcohol related problems that negatively impact those individuals living or working in the neighborhood, including without limitation, loitering, violence, drunkenness, public urination, solicitation, drug-dealing, drug use, and loud noise on or near the premises. Such mitigation measures shall include the operators and employees of the establishment maintaining adequate surveillance of the premises and nearby areas and contacting local law enforcement officials during the early stages of a disturbance.
- vii. Drug Paraphernalia: An off-site alcohol establishment shall be prohibited from selling drug paraphernalia 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 (as defined in California Health and Safety Code Section 11054 et seq.) in violation of the California Uniform Controlled Substances Act commencing with California Health and Safety Code section 11000.

viii. Prohibited Vegetation: Exterior vegetation shall not be planted or maintained that could be used as a hiding place for persons on the premises. Exterior vegetation may be planted and maintained in a manner that minimizes its use as a hiding place.

ix. Window Obstructions: To ensure a clear and unobstructed view of the interior of the premises from the exterior public sidewalk or entrance, including the area in which the cash registers are maintained, window obstructions (including window signs, vending machines, shelves, racks, storage, etc.) shall not cumulatively block windows or entry doors in excess of the allowances provided for window signs by Article 22 of this Chapter.

x. Training: Each off-site alcoholic beverage establishment operator and its employees selling alcohol shall complete the Licensee Education on Alcohol and Drugs (LEAD) program training provided by the California Department of Alcoholic Beverage Control. LEAD certificates shall be kept on the premises and provided to City officials within 48 hours of a written request.

xi. Posting of Documents: A copy of these 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 as well as any City code enforcement officer, or authorized state or county official.

b. The above operational standards and beverage sales limitations shall be incorporated into any new conditional use permit for off-site alcoholic beverage sales issued under the provisions of this Article or any business license issued under the provisions of this Title that authorizes new off-site alcoholic beverages sales if no conditional use permit is otherwise required. Dependent upon the facts and circumstances of any given application, the Planning Commission or the Zoning Administrator for such permits or licenses as are within his or her approval authority, may include other conditions in an establishment's conditional use permit or business license to mitigate nuisance, including but not limited to: limit the hours of operation or other operational characteristics of the use; restrict outdoor storage and display; require a special security plan or security measures; make alterations to the entries/exits or other floor plan changes; or add requirements for buffering, screening, lighting, planting areas, or other site elements to avoid adverse impacts on adjacent lots or the surrounding areas.

c. Failure to comply with any of the above operational standards or added conditions of approval shall constitute grounds (but not the sole grounds) for revocation of a conditional use permit and/or business license.

#### (4) Conditional use permit modification or revocation

##### (i) Grounds for modification or revocation

a. Notwithstanding the provisions of Section 16-3.02.090 of this Title, an alcoholic beverage sales establishment's conditional use permit may be modified or revoked by the Planning Commission after holding a public hearing in the manner prescribed

in Chapter 2, Article 5 of this Title, for failure to comply with operational standards, training requirements, or other conditions of approval imposed through its conditional use permit. Notice of such hearing by the Planning Commission at which it will consider the modification or revocation of an establishment's conditional use permit shall be in writing and shall state the grounds therefor. Notice shall be mailed by first-class mail and certified mail return receipt requested to the establishment's owner and the property owner (if different) at least ten (10) days before the date of the hearing.

- (ii) Procedures for Investigation of potential violations of conditions of approval and/or operational standards and remedies are set forth in Subsection 16-3.07.015(a)(6), below.

(5) Deemed approved alcoholic beverage sales regulations

(i) Regulations Established.

- a. Except as otherwise provided in this Chapter, any off-site alcoholic beverage establishment in the City that is a nonconforming alcoholic beverage establishment, as defined in Section 16-3.01.010 of this Title, lawfully operating prior to [the effective date of this ordinance], shall thereafter be a deemed approved establishment in accordance with Subsection 16-3.07.015(a)(5)(ii). In addition, any alcoholic beverage establishment exempt from the requirement to obtain a conditional use permit pursuant to Subsection 16-3.07.015(a)(3)(i)b that lawfully commences operations on or after [the effective date of this ordinance] shall be an establishment with deemed approved status for purposes of this Section. Such establishments may continue to lawfully operate provided the business is conducted in compliance with the performance standards contained in Subsection 16-3.07.015(a)(5)(iii) and all other applicable provisions of the deemed approved regulations specified in this Subsection 16-3.07.015(a)(5).

(ii) Automatic deemed approved establishment designation

- a. As of [the effective date of this ordinance], each off-site alcoholic beverage establishment in the City that is a nonconforming alcoholic beverage establishment, as defined in Section 16-3.01.010 of this Title, lawfully operating prior to [the effective date of this ordinance] shall be considered a deemed approved establishment and shall no longer be considered a legal nonconforming use. In addition, any alcoholic beverage establishment exempt from the requirement to obtain a conditional use permit pursuant to Subsection 16-3.07.015(a)(3)(i)b that lawfully commences operations on or after [the effective date of this ordinance] shall be an establishment with deemed approved status for purposes of this Section. A deemed approved establishment shall obtain and retain its deemed approved status as long as:
  - 1. The establishment complies with the deemed approved performance standards set forth in Subsection 16-3.07.015(a)(5)(iii); and
  - 2. The establishment complies with any conditions contained in such establishment's previously-granted conditional use permit (if any) or business license which are consistent with the operational standards in Subsection 16-3.07.015(a)(3)(iv), or any additional conditions imposed on the deemed approved establishment as a result of modifications imposed by the Planning Commission under Subsections 16-3.07.015(a)(5)(vi) and (a)(6) (as applicable); and

3. The establishment pays all required fees and undergoes an initial compliance check within ninety (90) days of [the effective date of this ordinance] and annually thereafter in conjunction with the business license renewal process (as applicable) to ensure such establishments remain in compliance with the performance standards and all other applicable provisions of the deemed approved alcoholic beverage sales regulations; and
4. The establishment does not change its type of ABC license within a license classification or "substantially change its mode or character of operation," as provided in Subsection 16-3.07.015(a)(5)(v).

(iii) Deemed approved performance standards for off-site alcohol sales establishments

- a. The deemed approved performance standards set forth in this Subsection shall apply to all off-site alcoholic beverage sales establishments that hold deemed approved status as set forth above. In order to retain deemed approved status, such establishments must be operated and maintained in compliance with all of the following:
  1. An establishment shall not result in adverse effects to the health, peace, or safety of persons residing or working in the surrounding area.
  2. An establishment shall not result in nuisance activities within the premises or on adjacent properties or roadways, 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, lewd conduct, sales to minors or police detentions and arrests that were not otherwise mitigated during the early stages of disturbance.
  3. An establishment shall comply with all provisions of local, state or federal laws, regulations or orders, including without limitation, those of the ABC; California Business and Professions Code sections 24200, 24200.6, 25612, and 25612.5; as well as any condition imposed on any permits issued pursuant to such applicable laws, regulations or orders, excluding any previously required training. This includes payment of annual City business license fees.
  4. The establishment's premises upkeep and operating characteristics shall be compatible with, and shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
  5. Training: Each off-site alcoholic beverage establishment operator and their employees selling alcohol shall complete the Licensee Education on Alcohol and Drugs (LEAD) program training provided by the ABC within 60 days of hire for employees hired after [effective date of ordinance] or within ninety (90) days of said date for existing employees. LEAD certificates shall be kept on the premises and provided to City officials within 48 hours of a written request.
  6. Posting of Documents: A copy of these performance 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 as well as any City code enforcement officer, or authorized state or county official.
- b. Failure to comply with the performance standards set forth herein shall constitute a public nuisance.

(iv) Notification to owners of deemed approved establishments

- a. The City shall notify each owner and/or operator of an off-site alcoholic beverage establishment of its deemed approved status at the address as shown on their City business license, and also, if not the same, shall notify any property owner at the address shown on the county assessor's property tax assessment records. The notice shall be sent by certified mail with return receipt requested and shall include:
  - 1. A copy of the performance standards in Subsection 16-03.07.015(a)(5)(iii), with the requirement that they be posted in a conspicuous and unobstructed place visible from the entrance of the alcohol sales establishment for public review;
  - 2. Notification that the establishment is required to comply with all the performance standards;
  - 3. Notification that initial and annual compliance inspections will be conducted by the City to ensure compliance and that collection of the compliance inspection fee set forth in the City's most recently adopted master fee schedule will be required (as applicable); and
  - 4. Notification the establishment is required to comply with all other aspects of the deemed approved regulations.
- b. Should the notice be returned, then the notice shall be sent via first-class mail and hand delivered by City Code Enforcement or Planning Department staff to the alcohol sales establishment. Failure of any person to receive notice given pursuant to this section shall not affect the deemed approved status of the establishment.

(v) Change in ABC License Type; Substantial Change in Mode or Character of Operation.

- a. In order to continue operation upon the occurrence of any of the following, a deemed approved alcoholic beverage establishment shall require approval of a conditional use permit, or modification of an existing conditional use permit, as the case may be, in the manner provided by this Section:
  - 1. The establishment changes its alcoholic beverage sales activity so that ABC requires a different type of license.
  - 2. There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change in mode or character of operation" shall include, but not be limited to, any of the following:
    - i. The establishment increases the floor or land area or shelf space devoted to the display or sales of any alcoholic beverage beyond that which actually existed (for any nonconforming establishment) or was permitted by any conditional use permit immediately prior to the date the establishment initially was deemed approved;
    - ii. The establishment extends its hours of operation by thirty minutes or more;
    - iii. The establishment voluntarily discontinues its active operation for more than ninety (90) consecutive days;
    - iv. The establishment ceases to be licensed by the ABC;
    - v. Any other circumstances that result in a substantial change in the mode or character of operation, except for those circumstances listed in subdivision (b) of Section 23790 of the California Business and Professions Code.
- b. Upon notification of or discovery by the City of any of the above occurrences, a public hearing before the Planning Commission shall be held in accordance with Chapter 2, Article 5 of this Title, to determine whether a substantial change in the mode or

character of operation of the establishment has occurred. If the Planning Commission determines that a substantial change has occurred, the alcoholic beverage sales establishment must cease operation and may not resume unless it applies for and obtains a new or modified conditional use permit in conformance with this Chapter.

(vi) Deemed approved establishment status modification or revocation

a. Grounds for modification or revocation

1. An alcoholic beverage sales establishment's deemed approved status may be modified or revoked by the Planning Commission for failure to comply with the performance standards in Subsection 16-3.07.015(a)(5)(iii) after holding a public hearing in the manner prescribed in Chapter 2, Article 5 of this Title. Notice of such hearing by the Planning Commission shall be in writing and shall state the grounds therefor. Notice shall be mailed by first-class mail and certified mail return receipt requested to the establishment's owner and the property owner (if different) at least ten (10) days before the date of the hearing.

b. Procedures for investigation of potential violations of performance standards and remedies are set forth in Subsection 16-3.07.015(a)(6), below.

(6) Investigative procedures for potential violation of conditions of approval and/or operational standards, or deemed approved performance standards applicable to off-site alcohol beverage sales establishments; remedies

(i) The following investigative procedures shall be utilized for potential violations of conditions of approval and/or operational standards, or deemed approved performance standards applicable to off-site alcohol beverage sales establishments

a. Upon the City's receipt of a complaint from the public, police department, City official, or any other interested person that an off-site alcohol beverage sales establishment is operating in violation of: (1) the conditions of approval set forth in its conditional use permit and/or the operational standards in Subsection 16-3.07.015(a)(3)(iv); or (2) in the case of a deemed approved establishment, the performance standards in Subsection 16-3.07.015(a)(5)(iii) and/or any conditions of approval set forth in its non-conforming conditional use permit or otherwise established by the Planning Commission or Zoning Administrator, the following procedures shall apply:

1. A City code enforcement officer (or other designated City representative) shall assess the nature of the complaint and its validity by conducting an on-site observation and inspection of the premises to assess the establishment's compliance with the applicable conditions, operational standards, or performance standards.

2. If the enforcement officer (or other designated City representative) determines that the establishment is in violation of the applicable conditions of approval or standards, he/she shall give written notice of the violation to the owner and/or operator of the establishment as set forth herein and seek to remedy the violation by issuing an administrative citation pursuant to Chapter 1.05 of Title 1 of the Victorville Municipal Code if the violation is not timely corrected and no hearing on the notice of violation is requested pursuant to Section 16-6.01.150. The notice of violation shall be given in accordance with Sections 16-6.01.070

and 16-6.01.080 of this Title. However, after providing written notice of violation, should the enforcement officer (or other designated City representative) in his or her sole discretion, determine that the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action, he or she may, in lieu of following the administrative citation procedure, refer the matter directly to the Planning Commission for a hearing at which the establishment's conditional use permit or deemed approved status may be modified or revoked.

3. Any notice of violation or administrative citation issued under this Section shall be issued, processed, and enforced in compliance with the provisions of Chapter 6, Article 1 of this Title or Chapter 1.05 of Title 1, respectively, unless otherwise expressly provided by this Section. If the owner or operator receiving a notice of violation requests a hearing pursuant to Section 16-6.01.150 of this Title, the City Manager or his/her designee may, in addition to holding such a hearing, make a recommendation to the Planning Commission as set forth in Subdivisions i and ii below. If the owner or operator receiving an administrative citation requests an appeal pursuant to Section 1.05.090 of Title 1, and an appeal hearing is held pursuant to that Section, the hearing officer may, in addition to exercising the powers in Section 1.05.090, likewise make a recommendation to the Planning Commission as set forth in Subdivisions i and ii below:

  - i. In the case of a conditionally permitted establishment, to conduct a hearing to consider modifying or revoking the establishment's conditional use permit, if in the judgment of the City Manager or his/her designee / hearing officer, based upon information then before him or her, such action is necessary to ensure compliance with this Section. Such recommendation may include the suggestion of additional or amended reasonable conditions on the use, including but not limited to, the conditions listed in Subsection 16-3.07.015(a)(3)(iv)b of this Section and the operational standards listed in Subsection 16-3.07.015(a)(3)(iv)a; or
  - ii. In the case of a deemed approved establishment, to conduct a hearing to consider modifying or revoking the establishment's deemed approved status, if in the judgment of the City Manager or his/her designee / hearing officer, based upon information then before him or her, such action is necessary to ensure compliance with this Section. Such recommendation may include the suggestion of imposing reasonable conditions on the establishment, including but not limited to, the operating standards and conditions listed in Subsection 16-3.07.015(a)(3)(iv)a.
4. If a hearing before the Planning Commission is conducted on a potential violation (in the manner prescribed in Chapter 2, Article 5 of this Title) the Planning Commission shall determine whether the establishment is in compliance with:

  - i. In the case of a conditionally permitted establishment, the operational standards and/or conditions of approval in the establishment's use permit. Based on this determination, the Planning Commission may continue the operations of the establishment under the existing conditional use permit; modify the conditional use permit by imposing additional reasonable conditions, including but not limited to, the operating standards and conditions listed in Subsection 16-3.07.015(a)(3)(iv), as are in its judgment necessary to ensure compliance with the operational standards and/or



conditions of approval; or may revoke the establishment's conditional use permit. If the Planning Commission determines to impose further, new conditions on the establishment's conditional use permit, such conditions shall be based upon the information then before it. In reaching a determination as to whether an establishment has violated the operational standards and/or conditions of approval, or as to the appropriateness of imposing additional or amended conditions, or revoking the use permit, the Planning Commission may consider the following:

- A. The length of time the establishment has been out of compliance with the operational standards and/or conditions of approval.
  - B. The impact of the violation of the operational standards and/or conditions of approval on the community.
  - C. Any information regarding the owner of the establishment's efforts to remedy the violation of the operational standards and/or conditions of approval. "Efforts to Remedy" shall include, but are not limited to:
    - I. Timely calls to the police department that are placed by the owner and/or operator of the establishment, his or her employees, or agents. It is not the intent of this Section to discourage owners and employees of alcohol establishments to report nuisance or criminal activity.
    - II. Requesting that those persons engaging in activities causing violations of the operational standards and or conditions of approval cease those activities, unless the owner or operator of the establishment, or his or her employees or agents feels that their personal safety would be threatened in making that request.
    - III. Making improvements to the establishment's property or operations, including, but not limited to, the installation of lighting sufficient to illuminate the area within the use's property line, the installation of security cameras, the clearing of window obstructions, the cleaning of sidewalks, and the abatement of graffiti within three days.
- ii. In the case of a deemed approved establishment, the performance standards and/or any conditions of approval set forth in its non-conforming conditional use permit or otherwise established by the Planning Commission or Zoning Administrator. Based on this determination, the Planning Commission may continue the deemed approved status for the establishment; modify the use by imposing reasonable conditions, including but not limited to, the operating standards and conditions listed in Subsection 16-3.07.015(a)(3)(iv) of this Title, as are in its judgment necessary to ensure compliance with the performance standards; or may revoke the establishment's deemed approved status. If the Planning Commission determines to impose further, new conditions on the establishment, such conditions shall be based upon the information then before it. In reaching a determination as to whether a deemed approved use has violated the performance standards, or as to the appropriateness of imposing additional or amended conditions, or revoking deemed approved status, the Planning Commission may consider the following:
- A. The length of time the establishment has been out of compliance with the performance standards and/or any conditions of approval set forth in its non-conforming conditional use permit or otherwise established by

the Planning Commission or Zoning Administrator.

B. The impact of the violation of the performance standards and any conditions of approval set forth in its non-conforming conditional use permit or otherwise established by the Planning Commission or Zoning Administrator on the community.

C. Any information regarding the owner of the deemed approved establishment's Efforts to Remedy (as defined above) the violations of the performance standards and any conditions of approval set forth in its non-conforming conditional use permit or otherwise established by the Planning Commission or Zoning Administrator.

5. If in the judgment of the Planning Commission, the operations of the owner or operator of the establishment constitute a nuisance, the owner or operator is unable or unwilling to abate the nuisance, and the nuisance is shown to be a threat to the public health and safety of the surrounding neighborhood, the Planning Commission may revoke the establishment's conditional use permit, or deemed approved status, as applicable. If revoked, any continued operation of the business shall require a new conditional use permit approved by the Planning Commission. All determinations, decisions, and conditions made or imposed regarding the alcohol sales establishment's use shall run with the land.

6. The decision of the Planning Commission shall be final and conclusive, unless timely appealed to the City Council as set forth in Chapter 2, Article 2 of this Title.

(b) Tobacco Retailer Establishment Regulations

This Section requires a tobacco retailer license for new tobacco retailer establishments and existing nonconforming tobacco retailer establishments, unless otherwise exempt; and outlines tobacco retailer licensing and noticing procedures as well as operational standards for tobacco retailer establishments.

(1) Purpose and Intent

(i) The specific purposes for enacting this Section are as follows:

- a. To prevent access to tobacco products and tobacco paraphernalia to those under twenty-one (21) years of age;
- b. To protect residential, commercial, industrial, civic and religious land uses and minimize the adverse impacts of nonconforming and incompatible uses;
- c. To provide regulations to address problems associated with the public consumption of tobacco products such as litter, loitering, graffiti, unruly behavior, violence, vandalism, and escalated noise levels, and ensure that tobacco retailer establishments do not become the source of undue public nuisances in the community;
- d. To provide for properly maintained tobacco retailer establishments so that the secondary effects of negative impacts generated by these activities on the surrounding environment are mitigated;
- e. To monitor tobacco retailer establishments to ensure they do not conduct the sales of illegal goods or products; and
- f. To provide opportunities for tobacco retailer establishments to operate in a mutually beneficial relationship to each other and to other surrounding uses.

(ii) This Section does not itself authorize or permit tobacco retailer establishments, but only applies to such establishments where otherwise allowed or permitted within an applicable zoning district. The requirements and regulations set forth herein are intended to complement California's tobacco-related laws and the City does not intend to replace or usurp any powers vested in the California Department of Public Health or other agencies with enforcement duties.

## (2) Administration

### (i) Applicability

- a. The provisions of this Subsection shall be applicable to all new tobacco retailers and existing nonconforming tobacco retailers, as defined in Section 16-1.03.010 of this Title in the City and shall apply to the extent permissible under other laws.
- b. The provisions of this Section shall apply to the extent permissible under other laws to all establishments located in the City that conduct retail sales of tobacco products.
- c. 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) Tobacco Retailer License (TRL) required

- (i) Except as provided in Subsection (iii) below, all new or existing tobacco retailers must obtain an annual tobacco retailer license (TRL) for each location at which tobacco retailing is to occur pursuant to Subsection 16-3.07.015(b)(4) of this Section and comply with and satisfy all conditions, as set forth in any applicable law or regulation, including any provision of the Development Code, in any entitlement granted, and in any business license issued, prior to engaging in any retail sales of tobacco.
- (ii) No tobacco retailer license may be issued to authorize retail tobacco sales at any location that is not licensed under state law to sell alcoholic beverages for consumption off the premises (e.g., an off-site alcoholic beverage sales establishment with a license issued by the ABC), except a nonconforming tobacco retailer establishment, as defined in Section 16-1.03.010 of this Title, applying for a TRL as required by this Subsection.
- (iii) A Tobacco retailer license shall not be required of a tobacco retailer operating as an accessory use to an alcoholic beverage sales establishment that is exempt from obtaining a conditional use permit pursuant to Subsection 16-3.07.015(a)(3)(i)b of this Section.

## (4) Tobacco retailer license procedure

- (i) Application for a tobacco retailer license shall be submitted in the name of each proprietor of the business proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be informed of all applicable federal, state, and local statutes, laws, regulations and ordinances, including, without limitation, the City's laws affecting the

granting of a tobacco retailer license.

(ii) All applications for a tobacco retailer permit shall be submitted in conjunction with the location's business license application (with the exception of nonconforming tobacco establishments which must submit their applications within not less than ninety (90) days of [the effective date of the ordinance]). The application shall contain, at a minimum, the following information:

- a. The name, address, telephone number, driver's license or similar identification, including date of birth, of each proprietor of the business that is seeking tobacco retailer status.
- b. The business name, address, telephone number and business hours of the single fixed location for which tobacco retailer status is sought.
- c. If the single fixed location is leased, a copy of the lease and the name, address and phone number of the property owner of the single fixed location.
- d. A single name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this Chapter (the "authorized address"). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in Subsection b above.
- e. A statement signed by each proprietor that no drug paraphernalia, as defined in Section 16-01.03.010 of this Title, is or will be sold at the business applying for the TRL.
- f. Proof that the location for which tobacco retailer status is sought has been issued a valid California Cigarette and Tobacco Products Retailer's License by the California Department of Tax and Fee Administration.
- g. Whether or not any proprietor or prior proprietor of the business, to the best of applicant's knowledge, has admitted violating, or has been found to have violated, this Chapter or whose proprietorship has admitted violating, or has been found to have violated, this Chapter, and, if so, the dates and locations of all such violations within the previous six years.
- h. Such other information as the Zoning Administrator deems necessary for the administration or enforcement of this Chapter.
- i. All information required to be submitted in order to apply for a tobacco retailer license shall be updated with the City whenever the information changes. A tobacco retailer shall provide the City with any updates within ten (10) business days of a change.
- j. A copy of the conditional use permit for the location, if applicable (or an explanation as to why such permit is not required).
- k. Proof of a passed initial inspection or proof of a failed initial inspection still within the thirty (30) day re-inspection period, applicable to nonconforming tobacco establishments only.

(iii) Upon the receipt of an application for a tobacco retailer license and the business license fee required by the Development Code (for new establishments; no business license fee is required for existing nonconforming tobacco retailers, provided they have a current valid City business license at the time of application), the City shall grant a TRL in conjunction with the City business license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- a. The information presented in the application is incomplete, inaccurate, or false. Intentionally supplying inaccurate or false information shall be a violation of the Development Code.
- b. The application seeks authorization for tobacco retailing at a location for which this Chapter prohibits issuance of tobacco retailer licenses. However, this paragraph shall not constitute a basis for denial of a TRL if the applicant provides the City with

- documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring a legally nonconforming tobacco retail establishment in an arm's length transaction.
- c. The application seeks authorization for tobacco retailing for a proprietor to whom the Development Code prohibits tobacco retailer status to be granted.
  - d. The application seeks authorization for tobacco retailing that is prohibited pursuant to this Chapter (e.g., mobile vending), that is unlawful pursuant to any provision of the Victorville Municipal Code, or that is unlawful pursuant to any other law.
  - e. The application seeks authorization for tobacco retailing at a location in non-compliance with the operating standards and/or compliance monitoring requirements set forth in Subsections 16-3.07.015(b)(5) and 16-3.07.015(c) of this Section.
  - f. A denial of a license application shall be in writing, citing the reasons for such denial and shall be appealable in accordance with the administrative appeal procedures outlined in Chapter 2, Article 2 of this Title.
- (iv) A TRL is non-transferable and shall be valid for a period of up to one year. A TRL is further subject to annual renewal, including licensing and inspection fees, in conjunction with the City business license renewal process.
- a. A TRL renewal shall only be granted if no violations are found during the annual compliance monitoring inspection required by Subsection 16-3.07.015(c)(1) of this Section.
- (v) A TRL may be denied pursuant to Subsection 16-3.07.015(b)(4)(iii) of this Article.

(5) Existing Nonconforming Tobacco Retailer Establishments.

(i) Regulations established

- a. All nonconforming tobacco retail establishments, as defined in Section 16-01.03.010 of this Title, lawfully operating prior to [effective date of ordinance] are legal nonconforming uses and shall be permitted to continue operating as tobacco retailer establishments. Such establishments may continue to lawfully operate provided the business is conducted in compliance with the operating standards contained in Subsection 16-3.07.015(b)(6)(ii) and all other applicable provisions of the tobacco retailer establishment regulations specified in this Subsection 16-3.07.015(b).

(ii) Automatic nonconforming tobacco retailer designation

- a. As of [the effective date of this ordinance], each tobacco retailer establishment in the City is a nonconforming tobacco retailer establishment, as defined in Section 16-1.01.010 of this Title, provided it was lawfully operating prior to [the effective date of this ordinance]. In order to obtain and maintain legal nonconforming status, each nonconforming tobacco retailer shall:
  - 1. Comply with all requirements and operational standards for tobacco retailer establishments set forth in Subsection 16-3.07.015(b)(6)(ii) of this Section and the nonconforming use provisions in Article 5 of this Chapter;
  - 2. Obtain and maintain an annual tobacco retailer license as set forth in Subsection 16-3.07.015(b)(4), as applicable; and
  - 3. Complete and pass an initial and annual inspection as outlined in Subsection 16-3.07.015(c) of this Section.

(iii) Nonconforming tobacco retailers; Notice

- a. Prior to [the effective date of the ordinance] the City shall notify the proprietor of a tobacco retailer of its nonconforming status at the address as shown on their City

business license, and also, if not the same, shall notify any property owner at the address shown on the county assessor's property tax assessment records. The notice shall be sent by certified mail with return receipt requested and shall include:

1. A copy of the tobacco operational standards specified in Subsection 16-3.07.015(b)(6)(ii) of this Article with the requirement that they be posted in a conspicuous and unobstructed place visible from the entrance of the tobacco retailer establishment for public review;
  2. Notification that the establishment is required to comply with all tobacco operational standards;
  3. Notification that initial and annual compliance inspections will be conducted by the City to ensure compliance and that collection of the compliance inspection fee set forth in the City's most recently adopted master fee schedule will be required (as applicable);
  4. Notification the establishment is required to comply with all other aspects of the tobacco retailer establishment regulations, including, the requirement to obtain a tobacco retailer license (as applicable).
- b. Should the notice be returned, then the notice shall be sent via first-class mail and hand delivered by City Code Enforcement or Planning Department staff to the subject tobacco retailer business location. Failure of any person to receive notice given pursuant to this section shall not affect the nonconforming status of the establishment.
- c. Nonconforming tobacco retailers shall be provided not less than ninety (90) days [from the effective date of the ordinance] to comply with the operational standards outlined in Subsection 16-3.07.015(b)(6)(ii) of this Section, unless otherwise granted an exception by the Planning Commission in conjunction with approval of a conditional use permit pursuant to Article 2 of this Chapter.
1. Within the ninety (90) day compliance period provided, tobacco retailers in full compliance with the tobacco operational standards, as determined by the City of Victorville Code Enforcement and Planning Departments in accordance the compliance monitoring procedures set out in Subsection 16-3.07.015(c), and having obtained the required tobacco retailer license shall retain their legal nonconforming tobacco retailer status.
  2. Those nonconforming tobacco retailers maintaining non-compliance with the tobacco operational standards at the conclusion of the ninety (90) day compliance period, and one fifteen (15) day re-inspection period if granted after failure of an initial inspection within the ninety (90) day compliance period, regardless of licensure status, shall lose their legal nonconforming status and be deemed a public nuisance, with abatement proceedings to proceed in accordance with Title 13, Chapter 13.02 and Title 16, Chapter 6 of the Victorville Municipal Code.

#### (6) Tobacco Operational standards

##### (i) Operational standards; applicability

- a. Applicable to all new and existing nonconforming tobacco retailers.
  1. Tobacco retailer sales activities and establishments shall be designed, constructed, and operated to conform with all of the tobacco operational standards and display limitations outlined in Subsection 16-3.07.015(b)(6)(ii).

- b. Failure to comply with any of these requirements shall constitute grounds (but not the sole grounds) for revocation of the TRL and/or the establishment's business license.
- (ii) Tobacco retailer establishments shall be designed, constructed, and operated to conform to all of the following operational standards and tobacco sales limitations:
- a. An establishment shall not result in adverse effects to the health, peace, or safety of persons residing or working in the surrounding area.
- b. An establishment shall not result in nuisance activities within the premises or on adjacent properties or roadways, including without limitation, 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, lewd conduct, sales to minors, or police detentions and arrests that were not otherwise mitigated during the early stages of disturbance.
- c. An establishment shall comply with all provisions of local, state or federal laws, regulations or orders, including without limitation, those in the California Health and Safety Code sections 11014.5 and 11364.5; the California Uniform Controlled Substances Act, commencing with California Health and Safety Code section 11000; California Business and Professions Code Sections 22950-22964; as well as any condition imposed on any permits issued pursuant to applicable laws, regulations, or orders. This includes payment of annual City business license fees.
- d. The premises upkeep and operating characteristics shall be compatible with, and shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
- e. The following shall be prohibited at any tobacco retailer business location:
1. Smoking or vaping on the premises at any time.
  2. The sale of tobacco products and paraphernalia to a person under the age of 21.
  3. Sales solicited or conducted on the premises by minors.
  4. The sale of drug paraphernalia.
  5. The sale of flavored tobacco products or presumptive flavored tobacco products.
  6. Distribution of free or low-cost tobacco, tobacco products or tobacco paraphernalia, as well as tobacco coupons for said items.
  7. The sale of tobacco products and paraphernalia via a vending machine, by a sidewalk vendor or mobile vehicle vendor (mobile vending), or via temporary use permit.
- f. The display area of tobacco products, including tobacco paraphernalia, shall be subject to the following limitations:
1. Shall not exceed 10 percent of the total floor area of a business establishment, excluding smoke shops, as defined in Section 16-1.03.010 of this Title, maintaining legal nonconforming status and a TRL.
  2. Shall be located behind a service counter in a manner that prohibits self-service by the customer.
  3. Display area devoted to tobacco paraphernalia shall not exceed a 2 foot in depth by 4 foot in length section of a single shelf space, excluding smoke shops maintaining legal nonconforming status and a TRL.
- g. An establishment shall comply with the following public nuisance prevention measures:
1. Lighting: Exterior areas of a single-tenant or multi-tenant property, including but not limited to parking lots, driveways, circulation areas, passageways, recesses,

and grounds contiguous to buildings, shall be provided with sufficient illumination levels to make clearly visible the presence of any persons on or about the premises from dusk to dawn in order to provide a safe, secure environment for all persons, property, and vehicles on-site. A minimum of 0.5 foot candle of illumination shall be maintained at any land surface point throughout the area to be illuminated. The overall area to be illuminated on-site shall have a minimum average of 2 foot candles at the land surface. Where a light source is directed to emanate horizontally and is visible from outside the property boundary, shielding shall be required to reduce glare to the greatest degree practicable.

2. Litter: Adequate litter receptacles shall be provided on site and in the building. 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.
3. Loitering: 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.
4. Signage: There shall be no exterior advertising of alcoholic products, or tobacco and paraphernalia or similarly controlled products in excess of the signage allowances provided by the California Business and Professions Code and Article 22 of this Title.
5. 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 and Spanish:
  - i. "California State Law prohibits the sale of tobacco products to persons under 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."
6. Mitigating Related Problems: The tobacco retailer shall be required to operate in a manner which mitigates problems related to its business operations that negatively impact those individuals living or working in the neighborhood, including without limitation, loitering, violence, drunkenness, public urination, solicitation, drug-dealing, drug use, and loud noise on or near the premises. Such mitigation measures shall include the operators and employees of the establishment maintaining adequate surveillance of the premises and nearby areas and contacting local law enforcement officials during the early stages of a disturbance.
7. Prohibited Vegetation: Exterior vegetation shall not be planted or maintained that could be used as a hiding place for persons on the premises. Exterior vegetation may be planted and maintained in a manner that minimizes its use as a hiding place.
8. Window Obstructions: To ensure a clear and unobstructed view of the interior of the premises from the exterior public sidewalk or entrance, including the area in which the cash registers are maintained, window obstructions (including window signs, vending machines, shelves, racks, storage, etc.) shall not cumulatively block windows or entry doors in excess of the allowances provided for window signs by Article 22 of this Chapter.
9. Posting of Documents: A copy of these operational standards, any applicable California Department of Tax and Fee Administration or city operating conditions and licenses 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 as well as any City code enforcement officer or authorized state or county official.

- (iii) Failure to comply with any of these requirements shall constitute grounds (but not the sole grounds) for revocation of an associated conditional use permit, TRL and/or business license.

(c) Monitoring, inspections, and violations

(1) Compliance monitoring

- (i) Applicability. With the exception of an off-site alcoholic beverage sales establishment consisting of a general retail store, a grocery store, or a retail pharmacy with greater than 8,000 square feet of gross floor area and a maximum of 10 percent of the gross floor area devoted to the sale and display of alcoholic beverages, all off-site alcoholic beverage sales establishments required to obtain a conditional use permit or having deemed approved status and all tobacco retailers required to obtain tobacco retailer licenses, shall be subject to an initial inspection upon approval of a conditional use permit, or upon notification provided in accordance with Subsections 16-3.07.015(a)(5)(iv) or (b)(5)(iii) of this Section (as applicable), as well as an annual monitoring inspection thereafter in conjunction with the business license renewal process. These inspections will be made by either the Code Enforcement or Planning Departments to assess an establishment's compliance with all applicable laws and operating or performance standards outlined in the Development Code and will include the collection of the compliance inspection fee set forth in the City's most recently adopted master fee schedule.
- (ii) Scope of Alcohol Sales Establishment and Tobacco Retailer Inspections. The Code Enforcement Department or Planning Department, shall conduct an interior and exterior site inspection of public areas of each off-site alcoholic beverage establishment and tobacco retailer prior to the initial issuance of a business license or granting of a TRL, prior to the annual issuance of a renewal business license or renewal of a TRL, or upon notification provided in accordance with Subsections 16-3.07.015(a)(5)(iv) or (b)(5)(iii) of this Section. The scope of the inspection shall include, but is not limited to:
  - a. Exterior property maintenance and cleanliness;
  - b. Landscape maintenance in accordance with the Development Code;
  - c. Maintenance and upkeep of the primary structure such as windows, paint/stucco, weather protection, roof and other architectural features as well as ancillary site features such as off-street parking, trash enclosures, etc.; and
  - d. Compliance with operating standards or performance standards outlined in Subsections 16-3.07.015(a)(3)(iv)a, (b)(6)(ii), or (a)(5)(iii)a of this Section, including without limitation, public nuisance prevention measures, display area limitations, and sales of permitted beverage type and container sizes.
- (iii) Alcohol Sales Establishment and Tobacco Retailer Initial Inspections. Upon approval of a conditional use permit for an off-site alcoholic beverage sales establishment, upon application by a tobacco retailer for a TRL, or upon notification to establishments provided in accordance with Subsections 16-3.07.015(a)(5)(iv) or (b)(5)(iii) of this Section, the aforementioned establishments shall undergo one initial compliance

inspection to be conducted by either the Code Enforcement Department or Planning Department prior to the issuance of a business license, prior to the granting of a TRL, or within ninety (90) days of [effective date of ordinance] for deemed approved establishments or legal nonconforming tobacco retail establishments, and one compliance re-inspection to be conducted no sooner than fifteen (15) days after a failed initial compliance inspection unless the business owner requests the re-inspection take place at an earlier date.

a. Any new off-site alcohol sales establishment for which a conditional use permit has been approved, or tobacco retailer establishment that has applied for a TRL, shall not be issued a business license, or granted a TRL, until any violation found after the initial compliance inspection, or the compliance re-inspection is resolved. Operation of a business without a business license shall be subject to the penalties and enforcement provisions of Section 16-6.01.100 of this Title.

b. Any violation found at a legal nonconforming tobacco retailer establishment or deemed approved alcohol sales establishment for which the compliance period has been exhausted in pursuant to Subsections 16-3.07.015(a)(5)(ii) or (b)(5)(iii) of this Section, shall be subject to the penalties and enforcement provisions of Section 16-6.01.100 of this Title.

(iv) Alcohol Sales Establishment and Tobacco Retailer Annual Renewal Inspections. An off-site alcoholic beverage sales establishment for which a conditional use permit has been approved, or tobacco retailer establishment seeking a renewal business license or renewal of a TRL, or an establishment having deemed approved status, shall undergo one compliance inspection to be conducted by the Code Enforcement Department within thirty (30) days prior to the expiration of the business license or TRL, and one compliance re-inspection to be conducted no sooner than fifteen (15) days after a failed annual renewal inspection. Any violation found after the compliance re-inspection shall be subject to the penalties and enforcement provisions of Section 16-6.01.100 of this Title.

(v) Notice of Annual Alcohol Sales Establishment and Tobacco Retailer Renewal Inspection.

a. Prior to business license expiration for an off-site alcohol sales establishment or tobacco retailer, the City Manager, or his or her designee will mail a business license renewal notice to the business owner and the business owner's authorized representative (if any) notifying the business owner of the following:

1. The business owner's requirement to renew the annual business license as well as the tobacco retailer license (as applicable); and

2. Notice that Code Enforcement staff will inspect interior and exterior public areas of the business establishment to ensure that it is compliance with applicable conditional use permits, deemed approved performance standards, or tobacco operational standards (as applicable) within thirty (30) days of the date of the renewal notice.

b. Said notice will be mailed by first-class mail to the business owner and the business owner's authorized representative (if any) as it appears in the City business license records, and a copy will also be mailed to the alcohol sales establishment or tobacco retailer establishment to be inspected. In the case of multiple business owners of the same alcohol sales establishment or tobacco retailer, notice to any one of the business owners is sufficient notice.

c. In the event a business owner, business owner's authorized representative (if any),

or tenant at the alcohol sales establishment or tobacco retailer location refuses to allow the City access to conduct the interior and exterior site inspection of public areas, the City Manager, the City Code Enforcement Official, or their designees shall proceed in accordance with Section 16-6.01.050 of this Title and may use such other legal remedies as may be available at law or in equity to ensure that an inspection is conducted as required by this Section.

- d. If the City is not able to obtain the consent of the business owner, business owner's authorized representative (if any), or tenant of the alcohol sales or tobacco retailer establishment to conduct an inspection, the City shall withhold issuance of the business license until the inspection is conducted.

(vi) Results of Initial/Annual Alcohol Sales Establishment and Tobacco Retailer Inspections. After completion of the alcohol sales establishment or tobacco retailer initial inspections, the annual business license renewal inspections, or any re-inspection following an initial/renewal inspection where the alcohol sales establishment or tobacco retailer fails the inspection due to having violation(s) on the property, the City shall issue a Notice of Violation to the property owner and the business owner as noted in the City's business license records pursuant to Section 16-6.01.080 of this Title. As applicable, the Notice of Violation shall contain all information required by Sections 16-6.01.060 and 16-6.01.070 of this Title, including but not limited to, the following:

- a. An itemization of any violation(s) of the applicable laws identified during the inspection;
- b. The period of time given for correcting each of the identified violations;
- c. Notice that the City will re-inspect the alcohol sales establishment or tobacco retailer no sooner than the end of the period of time for correction;
- d. A statement that if the violations found by the Code Enforcement Department or Planning Department during the alcohol sales or tobacco retailer establishment re-inspection have not been corrected, the City will not issue or renew the business license, grant a renewal tobacco retailer license, confirm that the deemed approved status may be continued for an alcohol sales establishment, or confirm that legal nonconforming tobacco retailer establishment status may be maintained, as the case may be, and that the City may pursue any legal remedies available to it under Section 16-6.01.100 of this Title, and other applicable laws in order to abate said violations.

(vii) Passed Inspections. If no violations are found as a result of an initial or annual renewal inspection or re-inspection, the City's record shall so state, and the City shall issue or renew the business license, and continue the deemed approved status of the establishment, or grant or renew the TRL, provided any other outstanding business license requirements are satisfied. All inspection reports shall be available as a public record upon request.

## (2) Violations

- (i) Whenever the City Manager or his/her designee determines that a violation of this Section exists, a Code Enforcement Officer shall issue a written Notice of Violation containing all information required by Sections 16-6.01.060 and 16-6.01.070 of this Title, as applicable. The notice shall be provided pursuant to Section 16-6.01.080 of this Title. Said notice shall describe with reasonable detail the violation(s) so that the business owner has the opportunity to correct any identified violation(s). Any person

- who fails to comply with any provisions of this Article after receiving written notice of the violation(s) and who has exhausted the period of time provided to correct such violation(s) shall be deemed to be in violation of this Section.
- (ii) A violation of this Section shall be enforced in accordance with Section 16-6.01.100 of this Title. The City Manager or his/her designee may also take action to revoke an establishment's business or tobacco retailer license and refer deemed approved or conditionally permitted establishments to the Planning Commission for revocation or modification action if the business owner has failed to correct any or all violations. Any revocation, or modification to the licenses, permit, and status noted herein shall be subject to the following standards and procedures:
- a. Business and tobacco retailer licenses. Shall be subject to standards and procedures outlined in Chapter 7, Article 2 of this Title.
  - b. Conditional use permit. Shall be subject to the standards and procedures outlined in Subsections 16-3.07.015(a)(4) and (a)(6).
  - c. Deemed approved establishments. Shall be subject to the standards and procedures outlined in Subsections 16-3.07.015(a)(5)(vi) and (a)(6).
- (iii) Any alcohol sales establishment or tobacco retailer that has been issued a notice pertaining to a violation of this Title (not including an administrative citation), may appeal such notice in accordance with Section 16-6.01.150 thereof.
- (iv) Any alcohol sales establishment or tobacco retailer that has been issued an administrative citation pertaining to a violation of this Title may appeal such citation in accordance with Section 1.05.090 of Chapter 1.05 of Title 1 of the Victorville Municipal Code.
- (v) Any alcohol sales establishment or tobacco retailer that has been subjected to enforcement actions under Section 16-6.01.100 of this Article and remains non-compliant with any provisions thereof, including any alcohol sales establishment or tobacco retailer maintenance requirements and the adopted International Property Maintenance Code, or any state or local law relating to operating standards, property maintenance, building codes, or land use requirements, shall be considered a public nuisance and subject to abatement procedures set forth in Title 13, Chapter 13.02 and Title 16, Chapter 6 of the Victorville Municipal Code.

(3) Complaint based inspections

Nothing contained in this Article shall prevent or restrict the City's authority to inspect any alcohol sales establishment or tobacco retailer in response to a complaint alleging Victorville Municipal Code violations or violations of any other applicable laws, or to pursue any and all remedies available under the Victorville Municipal Code or other applicable laws.

(4) Failure to pay fees

Should an alcohol sales or tobacco retailer establishment business owner fail to timely pay the annual business license fee, compliance inspection fee, any cost recovery fee, or administrative fine related to the enforcement of and compliance with this Article, such unpaid fees or fines shall be a debt to the City enforceable in accordance with Sections 16-6.01.140 and 16-7.05.080 of the Development Code and Section 1.05.110 of Victorville Municipal Code.