

**CITY OF BENICIA**

**RESOLUTION NO. 18- 55**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE FORM-BASED CODE OF THE DOWNTOWN MIXED USE MASTER PLAN TO ALLOW OUTDOOR ENTERTAINMENT IN COMMERCIAL AREAS WITH A USE PERMIT**

**WHEREAS**, the Downtown Mixed Use Master Plan was adopted in 2007, including the Form-Based Code which superseded prior zoning; and

**WHEREAS**, prior to adoption of the DMUMP, amplified music was allowed with a Use Permit (“Eating and Drinking Establishment with Live Entertainment”) in the Downtown Commercial District and several Use Permits were approved under the prior zoning regulations for restaurants and bars with amplified music; and

**WHEREAS**, uses with amplified music that were established after adoption of the Downtown Mixed Use Master Plan that do not have a prior Use Permit are allowed to have amplified music before 8pm Mondays through Saturdays in accordance with the Noise Regulations, but cannot obtain a Use Permit to operate at other times because the DMUMP is silent about sound amplification; and

**WHEREAS**, the proposed amendments to the Downtown Mixed Use Master Plan of the BMC are exempt from the California Environmental Quality Act (“CEQA”) pursuant to Guidelines Section 15183 which states that a project that is consistent with the adopted General Plan for which an EIR was certified shall not require additional environmental analysis unless there are project-specific significant effects. The proposed amendments ensure consistency with the noise performance standards of the General Plan and do not alter the physical development standards or development densities previously analyzed under the certified City of Benicia General Plan EIR; and

**WHEREAS**, on November 9, 2017, the Planning Commission conducted a duly noticed public hearing on the draft resolution, received public testimony, and recommended City Council approval of the zoning text amendments; and

**WHEREAS**, on June 5, 2018, the City Council conducted a duly noticed public hearing on the draft amendments and received public testimony on the DMUMP amendments; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA HEREBY AMENDS THE DOWNTOWN MIXED USE MASTER PLAN AS FOLLOWS:**

**Section 1.**

Table 4.1 of the Town Core (TC) Zone Allowed Uses and Permit Requirements is amended to

read as follows:

Land Use Type <sup>1</sup>	Permit Required*
<b>Retail</b>	
Artisan Shop	P
Bar, tavern, night club, except with any of the following features	P
• Operating between 9 p.m. and 7 a.m.	UP
General retail, except with any of the following features:	P
• Alcoholic beverage sales	UP
• Floor area over 8000 sf	MUP
• On-site production of items sold	MUP
• Operating between 9 p.m. and 7 a.m.	MUP
Neighborhood market < 10,000 sf	P
Outdoor entertainment	UP <sup>4</sup>
Restaurant, café, coffee shop	P

**\*Key**

- P Permitted Use
- MUP Minor Use Permit Required - staff review only
- UP Use Permit Required
- NA Not an allowed use

**End Notes**

- <sup>1</sup> A definition of each listed use type is in the Glossary.
- <sup>2</sup> Allowed only on upper floors or behind ground floor use. *(not shown in this excerpt of the table)*
- <sup>3</sup> Body art and piercing requires use permit approval and is allowed only as an ancillary use. *(not shown in this excerpt of the table)*
- <sup>4</sup> Outdoor entertainment uses shall be subject to the standards of BMC 17.70.400, Outdoor entertainment.

**Section 2.**

The Glossary of Chapter 4: Form-Based Code of the Downtown Mixed Use Master Plan is amended to add the following definition in alphabetical order:

**Outdoor Entertainment:** Activities occurring outdoors that involve amplified or non-amplified noise for the enjoyment, recreation, or similar purpose of persons or patrons who are physically present. Includes, but is not limited to live music and playing, broadcasting or mixing recorded music.

**Section 3.**

This Resolution shall be in full force and effect on the effective date of the Ordinance amending Title 17 (Zoning) to add Section 17.70.400 (Outdoor Entertainment).

**Section 4.**

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

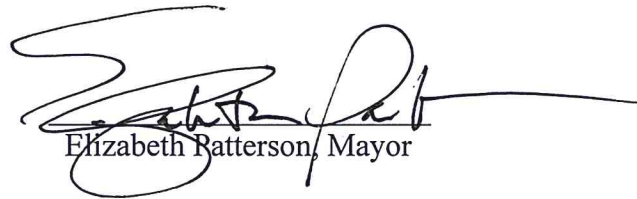
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On motion of Council Member **Young**, seconded by Council Member **Hughes**, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 5<sup>th</sup> day of June 2018, and adopted by the following vote

Ayes: **Council Members Hughes, Young, and Mayor Patterson**

Noes: **None**

Absent: **Council Members Campbell and Schwartzman**

  
Elizabeth Patterson, Mayor

Attest:

  
Lisa Wolfe, City Clerk

6-13-18  
Date