



CITY OF POMONA COUNCIL REPORT

August 1, 2022

To: Honorable Mayor and Members of the City Council

From: James Makshanoff, City Manager

Submitted By: Anita D. Gutierrez, Development Services Director

SUBJECT: CONSIDERATION OF A FINDING OF PUBLIC CONVENIENCE OR NECESSITY (PCN) TO ALLOW FOR AN OFF-SALE BEER & WINE LICENSE IN CONJUNCTION WITH A MARKET LOCATED AT 1670 INDIAN HILL BOULEVARD

RECOMMENDATION:

It is recommended that the City Council adopt the following resolution (Attachment No. 1):

RESOLUTION NO. 2022-147 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, APPROVING A REQUEST FOR A FINDING OF PUBLIC CONVENIENCE AND NECESSITY AS REQUIRED FOR AN OFF-SALE BEER AND WINE LICENSE (TYPE 20) IN CONJUNCTION WITH A MARKET LOCATED 1670 INDIAN HILL BOULEVARD

EXECUTIVE SUMMARY:

The applicant Ben Vesper, representing ALDI Inc., is requesting a finding of Public Convenience or Necessity (PCN) determination for a Type 20 alcohol license for off-sale beer and wine in conjunction with a market associated with an approved Conditional Use Permit (MODCUP-16701-2021). The approval of a finding of PCN would allow for the off-sale of beer and wine subject to conditions issued by the Planning Commission.

FISCAL IMPACT:

No Fiscal Impact.

PREVIOUS RELATED ACTION:

On May 25, 2022, the Planning Commission approved Conditional Use Permit (MODCUP-16701-2021), a request to modify an existing conditional use permit for a Type 20 off-sale alcohol (beer and wine) license in conjunction with the proposed development of a market in an existing shopping center on a property located at 1670 Indian Hill Boulevard (6-0-0-1).

DISCUSSION:

The applicant Ben Vesper, representing ALDI Inc., is requesting a finding of Public Convenience or Necessity (PCN) determination for a Type 20 alcohol license for off-sale beer and wine in conjunction with a market associated with an approved Modification to a Conditional Use Permit (MODCUP-16701-2021). The request involves modifying an existing conditional use permit approved in 1997 to re-establishing a Type 20 off-sale alcohol license for beer and wine.

In compliance with AB 2897 (the “Caldera Bill”), the California State Department of Alcoholic Beverage Control (ABC) requires that licenses in areas of undue concentration receive a Finding of PCN. Undue Concentration is defined as either:

- (1) The number of alcohol licenses exceeds the threshold of available licenses within a particular census tract. The threshold for the number of licenses is set by ABC and is based on a ratio of the number of alcohol licenses to population within the census tract, in relation to the Los Angeles County average population per census tract.
- (2) The proposed license location is within a crime-reporting district that is locally designated as “high crime.” The threshold for designating a district as “high crime” is twenty percent higher than average number of Part I offenses and Part II arrests per reporting district. ([Average number of Part I and II crimes] x 120% = High Crime)

If the City Council approves a finding and determines that the public convenience or necessity would be served by the issuance of an alcohol license located in an area with undue concentration, ABC will then issue the license to the applicant. If issued, the market would be permitted to sell beer and wine for off-site consumption. If the City Council instructs Planning Staff to return with a denial Resolution and approves a denial of the finding of Public Convenience or Necessity, the subject site would not be able to meet the conditions of approval, which would effectively prohibit the applicant from utilizing the approved Modification to a Conditional Use Permit (MODCUP-16701-2021).

ANALYSIS:

The proposed license is located within Census Tract 4027.06. According to the guidelines established by ABC, a total of three (3) off-sale licenses are allowed in the subject Census Tract No. 4027.06 before the tract is deemed to have undue concentration of off-sale alcohol licenses. Currently, there are four (4) establishments with off-sale alcohol licenses in Census Tract 4027.06.

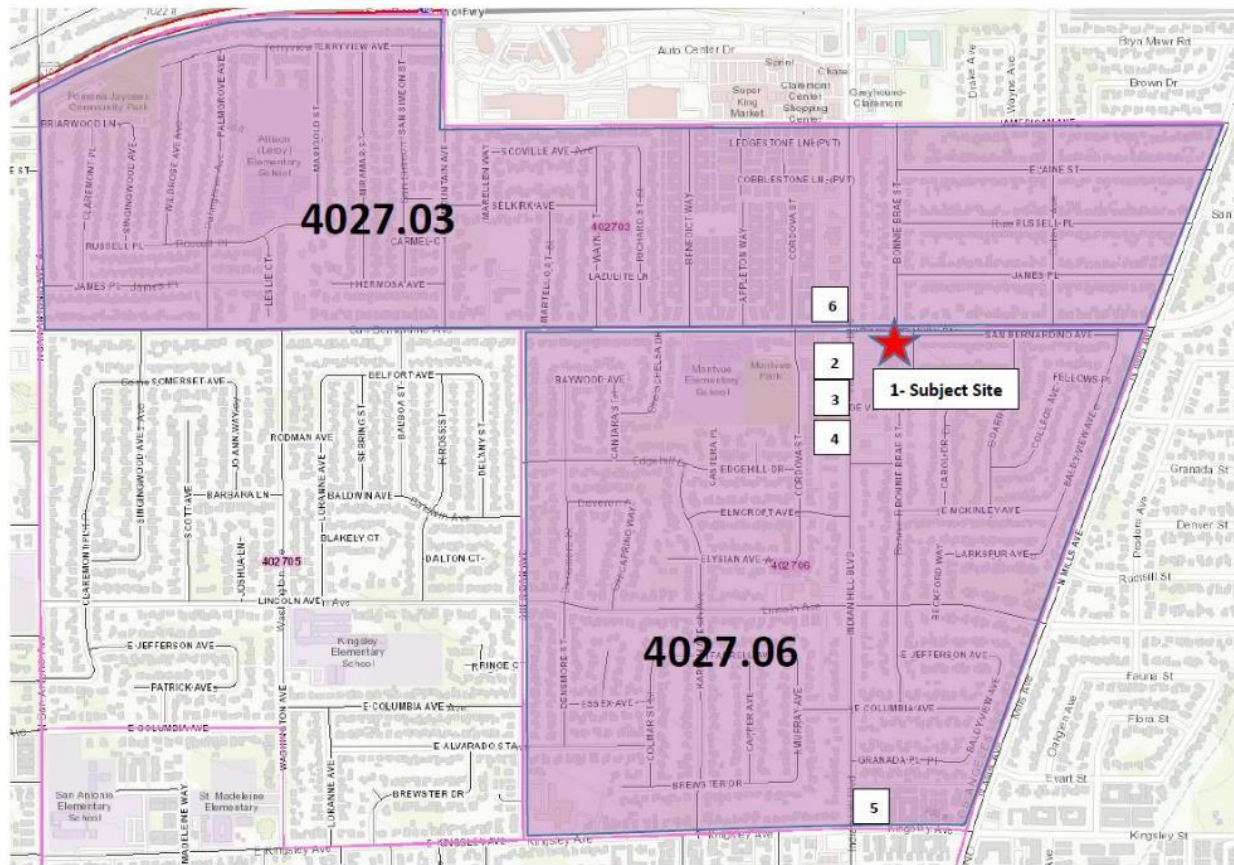
Table 1. *ABC Data on Off-sale alcohol licenses in Census Tract 4027.06 and 4027.03*

Census Tract	Existing Off-Sale Licenses	Allowed Off-Sale Licenses
Subject Census Tract 4027.06	4*	2
Adjacent Census Tract 4027.03	1	3

*Represents undue concentration

The subject site is situated at the boundary of the adjacent Census Tract of 4027.03. According to the guidelines established by ABC, a total of two off-sale licenses are allowed within this Census Tract before being deemed to have undue concentration.

Existing On-Sale Licenses & Census Tract



Census Tract 4027.06	Census Tract 4027.03
1. ALDI – 1670 Indian Hill Boulevard (Type 20) 2. Mike’s Liquor – 1673 Indian Hill Boulevard (Type 21) 3. Easy Day Liquor – 1571 Indian Hill Boulevard (Type 21) 4. Alta Dena – 1553 Indian Hill Boulevard (Type 20) 5. 7-Eleven – 806 Indian Hill Boulevard (Type 20)	6. 7-Eleven – 1707 Indian Hill Boulevard (Type 20)

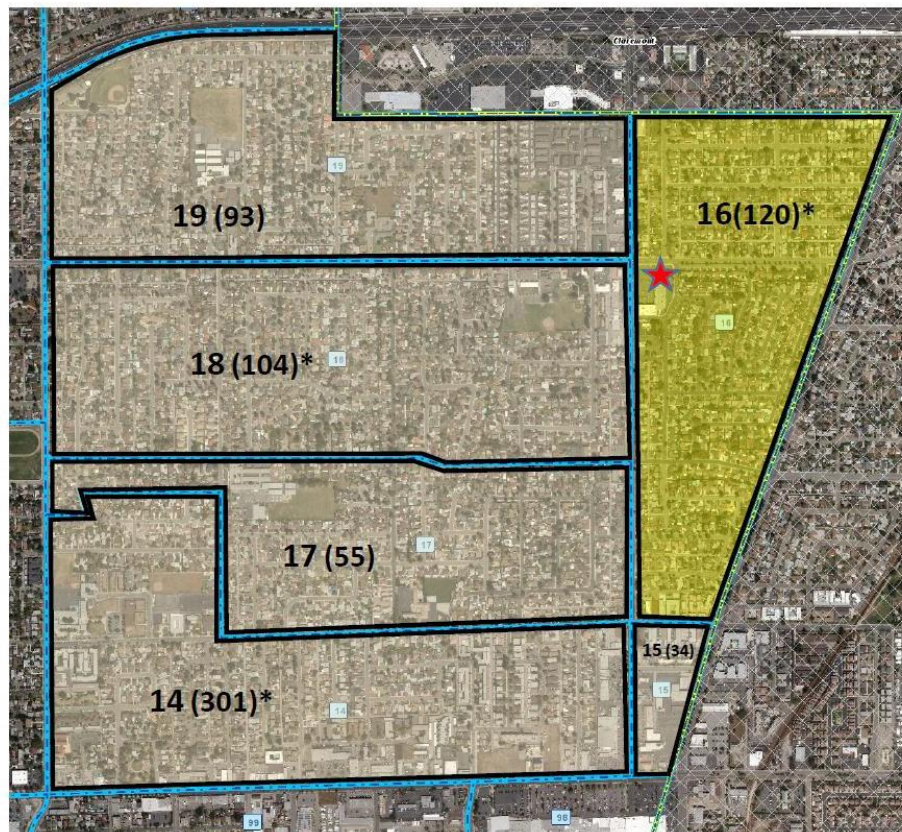
According to 2021 Police Reporting District Data, the threshold for designating a district “high crime” is 99 crimes. This threshold is lower than in previous years due to 2021 being a continuing year of the COVID-19 pandemic. The subject site is located in Police Reporting District No. 16, which experienced a total of 120 Part I Offenses and Part II Arrests (Table 2). Therefore, the district is considered a “high crime” reporting district.

Table 2. Police Reporting District Data (2021)

Census Tract	Police Reporting District	Part 1 Offenses & Part 2 Arrests
Subject Census Tract 4027.06	17	55
	18*	104*
	16* (Subject District)	120*
Adjacent Census Tract 4027.03		
	19	93

*Represents High Crime Police Reporting District

Subject and Adjacent Police Reporting Districts
with Total Number of Crimes for 2021



Number in Parenthesis () Indicates Sum of Part I Offenses and Part II Arrests (Total Number of Crimes)

*Indicates High Crime District (Threshold is 99 crimes for 2021)

★ - Subject Location

The proposed addition of an off-sale license will further exceed the number of allowed licenses within the respective census tract and, separately, the establishment is located within a police-reporting district that is designated as “high crime.” Therefore, a finding of Public Convenience or Necessity by City Council is required for the applicant to obtain an ABC license for off-sale beer and wine sales at the subject property.

Staff does not find the reactivation of this license in this area to be detrimental to nearby sensitive uses and would support the finding of a PCN for the following reasons:

- a. **Reactivation of Existing License Poses Limited New Public Safety Risks.** The previous use of a full-service supermarket with an ancillary use of the off-sale of beer and wine was discontinued in 2020 with the closure of Jimenez Ranch Market, according to City business license records. Due to the site being in continuous operation as a supermarket since 1997 with the approval of the existing conditional use permit allowing the off-sale of beer and wine, reactivating an off-sale license after two years of inactivity is distinct from establishing a new off-sale license in a location that has not historically had any alcohol sales, and poses a lower cumulative risk of public health and safety impacts.
- b. **Economic & Public Health Benefits Outweigh Public Safety Risks.** Three of the four existing off-sale alcohol establishments in Census Tract 4027.06 and the one existing off-sale alcohol establishment in Census Tract 4027.03 are all located approximately 500 feet from the project proposal. Though this creates relative cluster of off-sale establishments, the proposed project is distinguished from the existing establishments as it is a supermarket as defined by the Pomona Zoning Ordinance as it sells a limited amount groceries including packaged food and fresh produce such as fruits and vegetables as well as other incidental items. No similar market currently exists in these two Census Tracts. ALDI has indicated that the economic viability of establishing a supermarket in this neighborhood is predicated on the ancillary sales of beer and wine; therefore, the economic and public health benefits to the community of bringing in a supermarket outweigh any new public safety risks created by approving the reactivation of the license.
- c. **Inherent Concentration of Licenses at a Key Commercial Intersection.** The two Census Tracts have a majority of their areas designated as Residential Neighborhood Place Types by the Pomona General Plan. This designation generally limits development to residential uses. Other designations such as the Urban Neighborhood, Activity Center and Neighborhood Edge Place Types are limited to San Bernardino Avenue and Indian Hill Boulevard. These Place Types allow for a mix of uses, including commercial, however most of the properties within these two Census Tracts are either smaller in size or already developed as residential uses. Though these designations will likely allow for a greater mix and range of uses beyond residential in the future, the existing built environment has historically restricted commercial development to relatively smaller contiguous stretches of Indian Hill Boulevard and inevitably led to the establishment multiple off-sale alcohol establishments within close proximity. All four existing near-by off-sale alcohol establishments are convenience type

uses, which differ in scale and impact, and in the range of services provided to the consumer. The nearest supermarket use to this area is outside the Pomona within Claremont. In other words, a literal Census Tract concentration interpretation of this area does not prove helpful, as the concentration is a byproduct of available commercial zoning in the area, and not the boundaries of the census tract itself.

General Plan Conformance

The project site is designated as General Plan Place Type Activity Center, Urban Neighborhood, and Neighborhood Edge, which all contemplate either commercial uses or mixed uses, as well as Transect Zones T4-A, T4-B, and T5 which allow residential densities of up to 40, 70, and 80 dwelling units per acre, respectively. The proposed use is consistent with the sites' designated General Plan Place Type. The project is consistent with the following General Plan goals:

Goals 6A.G3: Improve the physical quality and shopping experience of existing and new activity centers throughout the City.

Goals 6A.G8: Improve the physical quality of existing neighborhood centers throughout the City, particularly those within or next to residential neighborhoods.

Goals 6A.P3: Create attractive, walkable streetscape environments that support shopping, entertainment, community, and pedestrian activity.

Allowing the proposed use of an alcohol license supports the aforementioned General Plan goals pertaining to walkability, expansion of the Downtown Area, and economic support of existing businesses. In addition, the Conditional Use Permit now contains an annual inspection fee in which the Planning Division may inspect the property to ensure the issued Conditional Use Permit is satisfying all issued conditions of approval. Should the permit conditionals of approval not be satisfied or should the permit prove to contribute to crime rates in the area, the permit may be revoked by the Planning Commission.

ALTERNATIVE

The City Council has the following alternative:

- 1) Instruct Planning Staff to return with a City Council Resolution denying a finding of Public Convenience or Necessity.

Prepared by:

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Assistant Planner

ATTACHMENTS:

Attachment No. 1 – Resolution No. 2022-147

Attachment No. 2 – Planning Commission Staff Report dated May 25, 2022 with Attachments