



CITY OF POMONA COUNCIL REPORT

DATE: February 26, 2018

TO: Honorable Mayor and Members of the City Council

FROM: Linda Lowry, City Manager

SUBMITTED BY: Mario Suarez, AICP, Development Services Director

SUBJECT: Public Hearing on the Planning Commission's Approval of Conditional Use Permit (CUP 4764-2016) to allow the sale of beer, wine, and liquor (Type 21—Off Sale general) in conjunction with an existing Wal-Mart Neighborhood Market at 778 Arrow Highway in the C-C (Community Shopping Center) zone

OVERVIEW

Recommendation – That the City Council approve CUP 4764-2016, as approved by the Planning Commission, subject to findings and conditions.

Fiscal Impact – If the City Council does approve CUP 4764-2016, as approved by the Planning Commission, any increase in retail sales at this location would result in an increase in sales tax and business license revenue received by the City of Pomona.

Public Noticing Requirements – Posted in Inland Valley Daily Bulletin on February 16, 2018, and mailed to a 400' radius of occupants and owners on February 12, 2018.

Previous Related Action – On January 10, 2018, the Planning Commission approved Conditional Use Permit (CUP 4764-2016) for Type 21—Off Sale General alcohol sales at the Wal-Mart on 778 East Arrow Highway, with conditions (4-3-0-0); on January 16, 2018, Councilmember Rubio Gonzalez filed an appeal of the Planning Commission decision; on February 5, 2018, the City Council approved a request to hear the appeal of the Planning Commission decision at its February 26, 2018 meeting (7-0-0-0).

EXECUTIVE SUMMARY

The applicant, Wal-Mart, requested a Conditional Use Permit (CUP 4764-2016) to permit the sale of beer, wine, and liquor (Type 21—Off Sale general) in conjunction with an existing Wal-Mart Neighborhood Market located at 778 East Arrow Highway in the C-C (Community Shopping Center) zoning district. The Planning Commission conducted a public hearing for Conditional Use

Permit (CUP 4674-2016) on January 10, 2018 and adopted a resolution approving Type 21—Off Sale General alcohol sales and denying Type 86—Instructional Tasting. (Attachment 1)

On January 16, 2018, an appeal on this decision was filed by Councilmember Rubio Gonzales citing the following reason: *“This market is located in a shopping center within a socioeconomically challenged community which is frequented by historically disenfranchised populations. This store is also located adjacent to a high school with nearby feeder schools, as many negative influences on them must be mitigated.”* (Attachment 12)

On February 5, 2018, the City Council approved a request for a public hearing on the Planning Commission’s approval of Conditional Use Permit (CUP 4674-2016), scheduled for February 26, 2018.

DISCUSSION

The following is a summary of the Planning Division’s analysis of the Conditional Use Permit (CUP 4764-2016).

Applicable Code Sections

Section .580.J and .5809.4 of the Pomona Zoning Ordinance establishes criteria for approval of a Conditional Use Permit for the off-sale of alcoholic beverages in conjunction with a bona-fide grocery store. The requirements for approval of off-sale alcohol sales are:

- 1) **Off Street Parking:** Provide one off street parking space per 100 square feet of gross floor area (of alcohol sales).
- 2) **Parking Lot:** parking lots, including landscaping and lighting, shall be installed and maintained per city standards.
- 3) **Area Compatibility:** The proposed off-sale liquor establishment shall be compatible with existing development in the area.
- 4) **Proximity:** the proposed location shall be sufficiently removed from any existing residential development or zoning and any church, school, park, or playground so as not to be detrimental to that use.

Surrounding Land Use Information

The properties to the north, east, and west are a combination of residential and commercial uses. The following table summarizes the surrounding land uses, and zoning and general plan designations.

Land Use Summary Table

	Existing Land Use	Zoning Designation	General Plan Designation
Subject Site	Retail	C-C	Urban Neighborhood
East	Residential Planed Development	R-3-PD	Residential Neighborhood
North	Retail/Multi-Family Residential	M-1-S	Activity Center
South	Single-Family Residential/Vacant	C-C	Residential Neighborhood
West	Retail Single-Family Residential	C-C R-1-7,200	Urban Neighborhood

Alcoholic Beverage Control (ABC) Compliance

1. ABC Permit Concentration

According to the guidelines established by the State Department of Alcoholic Beverage Control (ABC), a total of three off-sale licenses are allowed in the subject Census Tract No. 4021.02 before the tract is deemed to have undue concentration. The population of the Census Tract determines the number of licenses permitted. Currently, there are two establishments with off-sale alcohol licenses in the subject census tract. Thus, the existing number of off-sale licenses is not currently above the maximum permitted in the census tract, and will not create an undue concentration. The approval of an additional off-sale alcohol license would add a third license, which is at the number of allowed off-sale licenses in the census tract. The following table summarizes the concentration of on-sale ABC licenses in Census Tract No. 4021.02 and the adjoining Census Tract No. 4021.01 to the east. A map showing the number and location of all active off-sale ABC licenses within the two census tracts is provided for Commission consideration (Attachment 6).

ABC Data on Alcohol Licenses in Census Tracts

	Existing Licenses	Allowed Licenses
	Off-sale	Off-sale
Subject Census Tract 4021.02	2	3
Adjoining Census Tract (East) 4021.01	1	2

2. Crime Statistics

The subject site is located in Police Reporting District No. 23, which is not classified as a high crime district according to figures provided by the Police Department. In 2016, the District experienced a total of 106 Part I Offenses and Part II Arrests. The threshold for designating a district high crime is 160 crimes. Crime statistics for the subject reporting district and adjacent reporting districts are provided in the following table. A map showing location of Police Reporting District No. 23 and adjacent districts is provided for Commission consideration (Attachment 7).

Police Reporting District Data

	Police Reporting District	Part I Offenses and II Arrests (2016)
Census Tract 4021.02	23	106
Census Tract (East) 4021.01	20	95

* Indicates High Crime Area

The State Department of ABC defines a census tract as having “undue concentration” if either the threshold of allowable licenses is exceeded or the crime reporting district is defined as “high crime.” In this case, the number of existing off-sale ABC licenses, including the proposed, would not exceed the maximum allowed for the census tract, and the subject police reporting district is not considered “high crime.”

Zoning Ordinance Compliance

1. Off-Street Parking

The proposed alcohol sales will take place in conjunction with an existing bona fide grocery store, which meets compliance with one off-street parking space per 100 square feet of gross floor area of alcohol (estimated at 350 sf of alcohol sales).

2. Parking Lot

The project has been conditioned to address landscaping and lighting on the property, which will meet compliance with parking lot requirements for alcohol sales.

3. Area Compatibility

The market occupies an approximately 37,000 square foot tenant space on a 2.49 acre parcel that is part of a larger multi-parcel shopping center with a total building area of 103,100 square feet and a total site area of 8.40 acres at the southwest corner of E. Arrow Highway and N. Towne Avenue in the C-C (Community Shopping Center) zone. The proposed use would not require a change of zone or general plan land use designation, and is an allowable use (conditionally permitted) within the zoning district. Therefore, the proposed use is compatible with existing development in the area.

4. *Proximity to Sensitive Uses*

Pursuant to Zoning Ordinance Section .5809, the subject site should be “sufficiently removed” from sensitive uses so that the proposed alcohol sales will not be detrimental to these uses. Sensitive uses, which include residential neighborhoods, schools, houses of worship and parks, have been evaluated in the area. Distance is calculated as a straight line from the front entrance to the nearest parcel line of the sensitive use. The following table delineates the distance between the Wal-Mart and neighboring sensitive uses:

Residential	Distance
Single Family	711' (north) 228' (south) 445' (west)
Multiple Family	173' (east)

Public Schools	Distance
Barfield Elementary	2,000' (southeast)
Palomares Middle	1,764' (west)
Pomona High	760' (south)

Parks	Distance
Ted Greene Park	3,095' (southwest)
Palomares Park	1,395' (northwest)

Houses of Worship	Distance
St. Peter Orthodox	3,330' (southwest)
Vineyard Community	2,940' (north)
Charisma Life	2,480' (northwest)
Antioch Baptist	1,000' (south)

The proposed use has been conditioned in the Planning Commission Resolution (Attachment 1) to establish parameters for hours of operation, sales, promotion, employee training, site security, and police contact, all of which are intended to ensure that the proposed alcohol sales would not be detrimental to nearby sensitive uses. These conditions are as follows:

1. **Hours:** The establishment will only sell alcohol under the Type 21 license during regular business hours, which is defined as between the hours of 6:00 A.M. and 11:00 P.M., seven days per week.
2. **Sales:** The sale of alcoholic beverages shall be limited to off-sale beer, wine, and liquor. Sales of alcoholic beverages under the off-sale privileges of this license shall be restricted to the confines of the building, within the proposed refrigerated area listed on the approved plans. There shall be no beer sold in less than three-pack quantities; the sale of individual cans, bottles, or tapped/keg containers is prohibited. No liquor, wine, or wine coolers shall be sold in containers of less than 750 mL, unless sold by four-pack or other

manufacturer's pre-packaged multi-unit quantities. The sale of alcoholic beverages for consumption on the premises or in adjoining parking areas shall be prohibited. No sales to minors or obviously intoxicated patrons shall be allowed. Point-of-sale registers will be equipped with standard technology used to determine patron age by driver's license.

3. **Promotion:** No display or sale of alcohol shall be made from an ice tub. Store windows shall be kept clear of at all times from paper, paint, cardboard or any other material used for signage. All exterior windows shall be clear glass with no tinting or window coverings either interior or exterior. All interior window signage and exterior signage of any kind, which advertises the sale or availability of alcohol, shall be prohibited.
4. **Training:** The employees who sell alcoholic beverages shall be required to complete a training program in alcoholic beverage compliance, crime prevention techniques and the handling of violence. All new employees shall be required to complete "Licensee Education on Alcohol and Drugs" training that is provided by the California Department of Alcohol and Beverage Control or equivalent responsible beverage service program within thirty (30) days of hire.
5. **Site:** Loitering or panhandling on the premises shall be prohibited. Overnight parking of vehicles, including recreational vehicles (RVs) on the premises shall be prohibited. Signs prohibiting overnight parking shall be placed throughout the parking lot area. No vending machines of any kind shall be installed outdoors within the project site. There shall be no pay telephones installed within the enclosed portion of the premises equipped to receive incoming calls. There shall be no new payphones of any kind installed on the exterior of the premises.
6. **Security:** Designated areas for storage of beer and wine and liquor shall be equipped with a locking mechanism. Interior and exterior site video surveillance equipment shall be provided with signage advising customers that video recording devices are in use. Recordings shall be digital and recorded in high-definition, kept a minimum of ninety (90) days, and shall record all activity on surrounding public right-of-ways as well as the subject site. Prior to installation of the video surveillance equipment, a video surveillance plan shall be submitted for review and the privileges afforded under this resolution shall not be enjoyed prior to approval of such video surveillance plan by the Pomona Police Department.
7. **Police/City Contact:** All crimes occurring inside and outside of the location shall be reported to the Police Department at the time of the occurrence. At any time when the licensee is absent from the premises, a responsible party shall be designated who can respond to any inquiries from City officials. The business shall provide a list annually of no less than three employees who can be contacted twenty-four hours a day, to the Pomona Police Department's Records Bureau. The list of names will be used to facilitate a Police response to the location in the event of an emergency or other problem that requires entry into the location during non-business hours.

8. **Site Improvements:** In order to ensure adequate site conditions as required by the Pomona Zoning Ordinance pertaining to off-sale alcohol licensing, the following site improvements must be completed:
- a. One eight bicycle capacity or two, four bicycle capacity permanent commercial rated bicycle racks shall be provided near the main entrance, or in a convenient area, of the Walmart Neighborhood Market. Quality and location shall be subject to review and approval of the Planning Division. Bike racks shall be installed within ninety days of project approval.
 - b. All improperly trimmed trees shall be replaced with new trees like for like in all parking and landscaping areas on all contiguous parcels of the shopping center within six months of approval, subject to review and approval of the Planning Division.

Based on this analysis, Staff has determined that the proposed use is in compliance with Section .5809. Staff has also evaluated the proposed land use and has determined that the proposed use is in compliance with the C-C (Community Shopping Center Commercial District) zoning district. The proposed project conforms to the Zoning Ordinance, and as a result, the granting of this Conditional Use Permit, subject to conditions, will not be in conflict with the Zoning Ordinance.

General Plan Compliance

The General Plan land use map designates the subject project as Urban Neighborhood. Furthermore, the addition of an additional service to an existing market within an established neighborhood shopping center is consistent with the following planning approach for the “Neighborhood” Strategic Action Area of the General Plan:

“Preserve the scale, character, and value of established neighborhoods by ensuring that new residential development is well integrated with existing development.”

Furthermore, the proposed use is consistent with the following General Plan goal (6E.G1):

“Preserve stable neighborhoods by focusing new intensity and activity in clusters at major crossroads and areas of existing intensity throughout the city.”

Therefore, approval of the proposed Conditional Use Permit to allow the off-sale of alcoholic beverages in conjunction with a supermarket would contribute to the diversification of the City’s economy and promote an increased mix of uses.

ENVIRONMENTAL ANALYSIS/DETERMINATION

Upon submittal of the project, staff reviewed the proposed development project in accordance with the California Environmental Quality Act (CEQA) guidelines. After examining the

proposed project, staff determined that the project falls under Article 19, Section 15301 (Existing Facilities), because the proposed project consists of a negligible expansion of use for an existing building.

PUBLIC COMMUNICATIONS

A copy of the public hearing notice for the Planning Commission hearing was published on December 25, 2017 in the Inland Valley Daily Bulletin and was sent to the owners and occupants of properties within a 400-foot radius of the subject site on December 20, 2017 (Attachment 9). A copy of the public hearing notice for the City Council hearing was published on February 16, 2018 in the Inland Valley Daily Bulletin and was sent to the owners and occupants of properties within a 400-foot radius of the subject site on February 14, 2018 (Attachment 9).

At the January 10, 2018 Planning Commission Hearing, public comments of support and opposition were heard for the proposed project. The transcript of these comments are available as part of the meeting minutes for this hearing (Attachment 14).

CONCLUSION

The proposal is consistent with the allowed uses and development standards of the C-C (Community Shopping Center) zone. Based on staff's analysis of the issues, the off-sale alcohol license, as conditioned, will be compatible with the adjacent land uses and will not result in any adverse impacts to the surrounding area with the recommended operating conditions.

CITY COUNCIL OPTIONS

1. Approve CUP 4764-2016, as approved by the Planning Commission, subject to conditions.
2. Make findings to deny CUP 4764-2016, and adopt a denial resolution containing these findings.
3. Provide other direction to staff.

ATTACHMENTS

- 1) Draft CC Resolution approving CUP 4764-2016
- 2) Planning Commission Staff Report Dated January 10, 2018
- 3) Draft PC Resolution approving CUP 4764-2016
- 4) Location Map & Aerial Photograph
- 5) Project Plans Reductions
- 6) Existing Off-Sale ABC Licenses by Census Tract
- 7) Pomona Police Crime Statistics
- 8) Exhibit of Sensitive Uses
- 9) 400-foot Radius Map & Public Hearing Notice (Planning Commission)
- 10) Project Description Submitted by the Applicant

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- 11) 400-foot Radius Map & Public Hearing Notice (City Council)
- 12) Councilmember Gonzalez's Appeal Application, Dated January 16, 2018
- 13) City Council Staff Report Dated February 5, 2018
- 14) Unofficial Meeting Minutes of the Planning Commission Hearing on January 10, 2018