



# CITY OF POMONA COUNCIL REPORT

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March 5, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Mario Suarez, AICP, Development Services Director

Subject: Consideration of a Finding of Public Convenience or Necessity (PCN) for Conditional Use Permit (CUP-7445-2017) to Allow the Sale of Beer and Wine (ABC License Type 20) for Off-site Consumption in Conjunction with a Convenience Store Located at 805 Rio Rancho Road.

## OVERVIEW

**Recommendation** – That the City Council consider Findings of Public Convenience or Necessity (PCN) to allow the sale of beer and wine for off-site consumption in conjunction with a convenience store and gas station located at 805 Rio Rancho Road, and take one of the following actions:

- 1) Adopt the attached City Council Resolution (Attachment 1) approving the finding of Public Convenience or Necessity; **or**
- 2) Adopt the attached City Council Resolution (Attachment 2) denying the finding of Public Convenience or Necessity.

**Fiscal Impact** – There is no immediate fiscal impact associated with this action.

**Public Noticing Requirements** – None required.

### **Previous Related Action** –

- On June 14, 2017, the Planning Commission approved Sater Hijazi's application for a Conditional Use Permit (CUP 7745-2017) to allow off-sale beer and wine in conjunction with the AM/PM convenience store, subject to conditions of approval at 805 Rio Rancho Road (Attachments 3, 4 and 5).

- On July 10, 2017, the City Council denied a finding of Public Convenience or Necessity by adopting Resolution No. 2017- 105 on a vote of 2-4-1-0. (Attachments 6, 7, and 8).
- On October 5, 2017, the applicant filed a Verified Writ of Mandate and Complaint for Declaratory and Injunctive Relief on the City Council's July 10, 2017 denial of Finding of Public Convenience and Necessity.

(Original Conditional Use Permit)

- On November 12, 2014, the Planning Commission considered a Conditional Use Permit (CUP 14-051) application for the sale of beer and wine for off-site consumption in conjunction with the then-proposed AM/PM branded convenience store. The Planning Commission considered the request, which received a 3-1 vote for approval. There was one vacancy and two commissioners were absent; as such, the motion lacked four affirmative votes required to pass a Resolution. The applicant subsequently appealed the lack of decision to the City Council.
- On January 5, 2015, the City Council set matter for public hearing. On February 5, 2015, the City Council conducted the public hearing and approved CUP 14-051 for off-sale beer and wine and also approved a Finding of Public Convenience or Necessity to allow the sale of beer and wine for off-site consumption, both on a vote of 4-3-0-0.

The CUP for off-sale beer and wine granted to the prior applicant by the City Council expired when the off-sale of beer and wine use had not been implemented within one year from the date of Council's approval. The lapse of the prior CUP required the new owner/applicant to apply for a new CUP for off-sale beer and wine.

**Environmental Determination** - Upon submittal of the project, staff reviewed the proposed project in accordance with the California Environmental Quality Act (CEQA) guidelines. After examining the proposed project, staff has determined that the proposed project meets the criteria for a Class 1 Categorical Exemption, Section 15301 – Existing Facilities.

## EXECUTIVE SUMMARY

The current owner/applicant has re-submitted a request for a Public Convenience or Necessity determination to allow the sale of beer and wine for off-site consumption in conjunction with a convenience store located at 805 Rio Rancho Road for Council's consideration. The off-sale of beer and wine approval by CUP 7745-2017 is subject to Council's approval of a Finding of Public Convenience or Necessity (PCN). This condition is required whenever an alcohol license is requested in a high crime reporting district or an area of over concentration of ABC licenses. Whether the City Council makes the Finding of Public Convenience or Necessity will assist the

Department of Alcohol Beverage Control (ABC) in its decision to issue the Type 20 License being requested.

## **DISCUSSION**

As of January 1995, the State of California Legislature implemented AB2897 by amending the Business and Professions Code (Section 23958) to require the Department of ABC to deny an application for an alcohol license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of alcohol licenses.” Undue concentration is defined as follows:

- (1) An area is considered over concentrated when the ratio of alcohol licenses to population in a census tract exceeds the countywide average ratio of alcohol licenses to population; and/or
- (2) An area is considered a *high crime* area if the number of crimes in a police reporting district is twenty percent (20%) greater than the average number of reported crimes in the jurisdiction of the local law enforcement agency, as indicated in Attachment 11.

A Determination of Public Convenience or Necessity (PCN) is required for alcohol license applicants that have been denied or that may be denied by the Department of Alcoholic Beverage Control (ABC) pursuant to the AB2897 (the Caldera Bill).

## **ANALYSIS**

### Census Tract Information:

According to the guidelines established by the State Department of Alcoholic Beverage Control (ABC), the threshold for “undue concentration” in the subject Census Tract No. 4030 is four off-sale licenses. This threshold 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. As is shown in the table below, there are currently four establishments with off-sale alcohol licenses in the subject Census Tract.

The addition of the requested off-sale alcohol license will create an undue concentration of licenses. The following table summarizes the concentration of ABC licenses in Census Tract No. 4030 in addition to the adjoining Census Tract No. 4033.18 to the west and Census Tract No. 4029.02 to the east. Census Tract 4025.02 is located to the north and Census Tract No. 4028.03 is located northeast of the subject Census Tract. A map showing the number and location of all active off-sale ABC licenses within both adjacent Census Tracts is provided in Attachment 9.

**Table 1: Off-sale Alcohol Licenses in Census Tracts**

	<b>Existing Licenses</b>	<b>Allowed Licenses</b>
<b>Subject Census Tract 4030</b>	<b>4</b>	<b>4</b>
<b>Adjoining Census Tract (East) 4029.02</b>	<b>2</b>	<b>4</b>
<b>Adjoining Census Tract (West) 4033.18</b>	<b>2</b>	<b>3</b>
<b>Adjoining Census Tract (North) 4025.02</b>	<b>4</b>	<b>4</b>
<b>Adjoining Census Tract (Northeast) 4028.03</b>	<b>1</b>	<b>2</b>

**Crime Statistics:**

ABC guidelines state that undue concentration also applies when the subject crime reporting district is defined as “high crime.” High crime is defined as exceeding 120% of the average amount of crimes per district for the entire City. Crimes (Part I and II included in these statistics are: homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations).

The project site is located in Police Reporting District No. 83, which is currently classified as a high crime district according to figures provided by the Pomona Police Department (Attachment 10). The number of Part I Offenses and Part II Arrests in the district in 2017 was 415. The threshold for designating a district high crime is twenty percent higher than average number of arrests per reporting district (130 x 120%) equals 156 arrests.

**Crime Statistics - Police Reporting District (RD) Data**

	<b>Police RD</b>	<b>Part I Offenses and II Arrests (2018)</b>
<b>Census Tract 4030</b>	<b>83*</b>	<b>415</b>
	<b>82</b>	<b>122</b>
	<b>81</b>	<b>134</b>
<b>Census Tract (West) 4033.18</b>	<b>75</b>	<b>32</b>
	<b>74</b>	<b>45</b>

	<b>Police RD</b>	<b>Part I Offenses and II Arrests (2018)</b>
	<b>73*</b>	<b>271</b>
<b>Census Tract (East) 4029.02</b>	<b>85</b>	<b>152</b>
	<b>84*</b>	<b>431</b>

\* High Crime District

Based on the above, a finding of Public Convenience or Necessity is required to be made by the City Council for off-sale, Type 20, Beer and Wine alcohol sales at the subject property (Attachment 11). The map provided as Attachment 12 reflects sensitive uses in the vicinity.

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 a high crime area and an area with undue concentration, ABC will then determine whether to issue the license to the applicant. If issued, the convenience store would be permitted to sell beer and wine for off-site consumption (Attachment 1).

If the City Council denies the finding of Public Convenience or Necessity, the subject site would not be able to meet the conditions of approval. This action would effectively prohibit the applicant from utilizing the approved Conditional Use Permit (CUP 7745-2017) (Attachment 2).

## **CONCLUSION - CITY COUNCIL OPTIONS**

The City Council has the two following options regarding the Public Convenience or Necessity findings:

### **Option 1**

Adopt the attached City Council Resolution (Attachment 1) approving the finding of Public Convenience or Necessity; or

### **Option 2**

Adopt the attached City Council Resolution (Attachment 2) denying the finding of Public Convenience or Necessity.

Attachments –

- 1) Attachment 1 Draft City Council Resolution approving the Finding of Public Convenience or Necessity for CUP 7745-2017
- 2) Attachment 2 Draft City Council Resolution denying the Finding of Public Convenience or Necessity for CUP 7745-2017
- 3) Attachment 3 Planning Commission Staff Report CUP\_7445-2017\_No Attachments

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- 4) Attachment 4 Planning Commission Resolution No. 17-026 Approving CUP
- 5) Attachment 5 Planning Commission Minutes June 14, 2017\_Excerpts
- 6) Attachment 6 City Council Report with no attachments July 10, 2017
- 7) Attachment 7 City Council Resolution No. 2017-105 Denying PCN
- 8) Attachment 8 City Council Annotated Agenda Excerpts\_ July 10, 2017,
- 9) Attachment 9 ABC Census Tract Concentration
- 10) Attachment 10 Pomona Police Crime Statistics
- 11) Attachment 11 ABC High Crime Thresholds
- 12) Attachment 12 Sensitive Uses Map