



CITY OF POMONA COUNCIL REPORT

July 10, 2017

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Mark Lazzaretto, Development Services Director

Subject: Adoption of a Finding of Public Convenience or Necessity (PCN) related to Conditional Use Permit (CUP 7445-2017) to allow the sale of beer and wine for off-site consumption at a proposed new gas station located at 805 Rio Rancho Road within a shopping center located in the C-4 (Highway Commercial) zoning district

OVERVIEW

Recommendation – That the City Council adopt the attached resolution supporting a Finding of Public Convenience or Necessity (PCN) to allow the sale of beer and wine (ABC License Type 20) for off-site consumption at a newly constructed gasoline station and convenience store on property located at 805 Rio Rancho Road.

Fiscal Impact – There are no anticipated short-term or long-term fiscal impacts associated with this action.

Public Noticing Requirements – Not applicable.

Previous Related Action – A prior owner/applicant requested a CUP for the sale of beer and wine for off-site consumption within the proposed AM/PM branded convenience store in 2014 before construction of the service station. On November 12, 2014 the Pomona Planning Commission considered the request; however, there was no action taken based on a 3-1 vote on the approval resolution with two commissioners absent and one vacancy on the Commission. Four affirmative votes are required to pass a Resolution. The applicant subsequently appealed the lack of decision to the City Council. At a public hearing on February 2, 2015 the City Council approved the request on a vote of 4-3-0-0.

Due to the former applicant allowing the CUP to expire, a new application for a CUP was filed. On June 14, 2017 the Planning Commission approved the granting of a Conditional Use Permit (CUP 7745-2017) to allow for the off-site sales of beer and wine at this location. The resulted vote for approval was 4-0-1-2.

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 applicant is requesting the sale of beer and wine for off-site consumption within the recently opened AM/PM branded convenience store and gas station. Examples of the types of products to be sold at the market include food/grocery, household products, and other convenience items. Approximately 90 square feet of the floor area is proposed for the display of beer. The proposal requests display of alcohol at a location toward the rear of the store, primarily in eight refrigerated cases. The applicant is also proposing two non-refrigerated endcaps for display of beer as well.

In 2015, the City Council approved a CUP for sale of beer and wine at the location, prior to the AM/PM being constructed. The developer ultimately sold the project, and the new owner allowed the CUP to expire before implementing the ABC license. The new owner submitted an application for a new CUP and was approved by the Planning Commission. As a result of the location being in an area designated by ABC standards as an area of undue concentration, the applicant needs a finding of Public Convenience or Necessity to be approved by the City Council in order for an ABC license to be issued.

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 K.

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).

ISSUES 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. A map showing the number and location of all active off-sale ABC licenses within both Census Tracts is provided in the attached Planning Commission Report and exhibits.

Table 1: Off-sale Alcohol Licenses in Census Tracts

	Existing Licenses	Allowed Licenses
Subject Census Tract 4030	4	4
Adjoining Census Tract (West) 4033.18	3	4
Adjoining Census Tract (East) 4029.02	2	4

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. The number of Part I Offenses and Part II Arrests in the district was 502 last year (2016). The threshold for

designating a district high crime is twenty percent higher than average number of arrests per reporting district (133 x 120%) equals 160 arrests.

Crime Statistics - Police Reporting District (RD) Data

	Police RD	Part I Offenses and II Arrests (2016)
Census Tract 4030	83*	502
	82	91
	81	89
Census Tract (West) 4033.18	75	32
	74	47
	73*	278
Census Tract (East) 4029.02	85	150
	84*	427

* High Crime District

A finding of Public Convenience or Necessity is required to be made by the City Council for the applicant to obtain an ABC license for off-sale general alcohol sales at the subject property. 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).

CONCLUSION

At the recommendation of the Planning Commission, staff is recommending approval of the Public Convenience or Necessity finding and has prepared a resolution approving the finding of Public Convenience or Necessity. Alternately, should the Council wish to deny the Public Convenience or Necessity finding, staff has provided a draft resolution to deny the finding.

- Attachments – A. Draft City Council Resolution approving the Finding of Public Convenience or Necessity for CUP 7745-2017
B. Draft City Council Resolution denying the Finding of Public Convenience or Necessity for CUP 7745-2017
C. Planning Commission staff report June 14, 2017 (with attachments)
D. Planning Commission draft resolution approving CUP
E. Planning Commission draft Meeting Minutes for June 16, 2017