



## Legislation Details (With Text)

**File #:** 17-533      **Version:** 2      **Name:**  
**Type:** Consent Item      **Status:** Passed  
**File created:** 10/17/2017      **In control:** City Council/Public Finance and Economic Development Authority/Parking Authority  
**On agenda:** 11/20/2017      **Final action:** 11/20/2017  
**Title:** SUBJECT: Land Use Determination #17-01 - Finding of Public Convenience or Necessity to Allow Beer and Wine Sales for Off-Site Consumption for Madira Land Convenience Store Located at 1340 W. Olive Avenue, Suite #102

### REPORT IN BRIEF

This report provides options for the City Council to consider in making a Finding of Public Convenience or Necessity (PCN), as required by the Department of Alcoholic Beverage Control (ABC) to allow the sale of beer and wine for off-site consumption for Madira Land Convenience Store, located at 1340 W. Olive Avenue, Suite #102.

### RECOMMENDATION

City Council - Adopt a motion approving the Finding of Public Convenience or Necessity to allow the issuance of a Type 20 Alcohol License (allows the sale of beer and wine for off-site consumption) for Madira Land Convenience Store located at 1340 W. Olive Avenue, Suite #102.

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. Attachment 1 - Provisions of Undue Concentration.pdf, 2. Attachment 2 - Factors Determining PCN.pdf, 3. Attachment 3 - Location Map.pdf, 4. Attachment 4 - ABC License Types.pdf, 5. Attachment 5 - Site Plan.pdf, 6. Attachment 6 - Floor Plan.pdf, 7. Attachment 7 - Elevation 1.pdf, 8. Attachment 8 - Census Tract Map.pdf, 9. Attachment 9 - Census Tract Chart.pdf, 10. Attachment 10 - City Wide Crime Map.pdf, 11. Attachment 11 - 500 foot radius.pdf, 12. Attachment 12 - Neighborhood Incidents.pdf, 13. Attachment 13 - Commerical Incidents.pdf, 14. Attachment 14 - Sensitive Uses.pdf, 15. Attachment 15 - Letter from Applicant.pdf, 16. Attachment 16 - Draft Conditions of Approval.pdf

Date	Ver.	Action By	Action	Result
11/20/2017	2	City Council/Public Finance and Economic Development Authority/Parking Authority	approved	Pass

*Report Prepared by: Francisco Mendoza-Gonzalez, Planner, Development Services*

**SUBJECT: Land Use Determination #17-01 - Finding of Public Convenience or Necessity to Allow Beer and Wine Sales for Off-Site Consumption for Madira Land Convenience Store Located at 1340 W. Olive Avenue, Suite #102**

### REPORT IN BRIEF

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## RECOMMENDATION

**City Council** - Adopt a motion approving the Finding of Public Convenience or Necessity to allow the issuance of a Type 20 Alcohol License (allows the sale of beer and wine for off-site consumption) for Madira Land Convenience Store located at 1340 W. Olive Avenue, Suite #102.

## ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to modifications as conditioned by Council; or,
3. Deny the request completely; or,
4. Refer back to staff for reconsideration of specific items as requested by Council; or,
5. Continue item to a future City Council meeting (date and time to be specified in City Council motion).

## AUTHORITY

Business and Professions Code Section 23958 and 23958.4

## CITY COUNCIL PRIORITIES

Not applicable.

## DISCUSSION

State law mandates that ABC deny the issuance of a license to sell alcohol if the Census Tract in which the license will be issued is considered to have an “undue concentration” of existing alcohol licenses. The exception to this rule is that ABC may issue the license if the local jurisdiction makes a finding of “Public Convenience or Necessity” in support of the issuance of an additional license. However, the phrase “public convenience or necessity” is not defined in either the Alcoholic Beverage Control Act or in ABC’s Implementing Regulations, nor are specific guidelines provided. This determination must be made within 90 days of the date the local jurisdiction is notified of an application. See Attachment 1 - “Provisions for Undue Concentration” for more information regarding “undue concentration.”

Prior case law indicates that the Legislature’s intent for making a finding of public convenience or necessity was to apply different criteria than those used to determine “undue concentration.” Therefore “public convenience or necessity” means something other than the number and location of the licensed alcohol premises which are already covered by the factors used to determine undue concentration. Factors that may be used to determine a Finding of “public convenience or necessity” are found at Attachment 2. Staff, including the Police Department, have reviewed this request and are recommending approval.

The City Council may also deny the Finding of Public Convenience or Necessity, but should make one or more specific findings to support the denial. Such findings might be based on the fact that there are too many existing businesses within the area already serving alcohol, the number of crimes in the area, the proximity to residential uses, the type of business or operation, or other factors the City Council determines would make the issuance of an ABC license detrimental to the community. Guidance for making these findings can be taken from the “Provisions of Undue Concentration” found at Attachment 1.

## Madira Land Convenience Store

Madira Land Convenience Store is located at 1340 W. Olive Avenue, Suite #102 (Attachment 3), and is expected to open sometime later this year or early next year. The 1,320-square-foot convenience store would be remodeled to include new free-standing shelves, a walk-in refrigerator, vending machines, hot food counters, a storage room, bathrooms, and an office (Attachment 6).

Approximately 8% of the floor space would be devoted to beer and wine sales or a maximum of 105 square feet. The site plan and elevations would remain the same (Attachments 5 and 7). The store is located within Census Tract 10.03 which is allowed three off-sale licenses. However, there are currently five active licenses resulting in an “undue concentrated” census tract. In general, the businesses selling alcohol within this census tract are spread fairly evenly with an average distance of 1,200 feet from each other (Attachments 8 and 9).

The Planning Commission will consider a request for a conditional use permit to sell beer and wine at their November 8, 2017, meeting. The draft conditions of approval are included at Attachment 16.

### Sensitive Uses

The proximity of a business to residential uses, schools, churches, hospitals, or other “sensitive uses” may also be cause for ABC to deny the issuance of a license. Residential uses (duplexes and multi-family) are located within 200 feet of the subject site, across Olive Avenue. However, there are no other sensitive uses located within 1,000 feet of the subject site. The nearest sensitive use (beside the before mentioned residential properties) is Fahrens Park, which is located approximately 2 miles northeast of the subject site. The map at Attachment 14 shows the locations of these uses.

### Information of Fact

In order for the City Council to make their decision regarding a Finding of Public Convenience or Necessity, staff is providing information of fact for the City Council to consider. Based on the information provided in Attachment 15, staff is recommending approval of this request. Approval of this request would authorize the Director of Development Services (or Planning Manager) to notify ABC of this determination.

According to the Merced Police Department, this general area had a high concentration of incidents between 9/1/2016 and 9/12/2017. Within this time period, there were a total of 417 incidents within 500 feet of the subject site. Typically, particular attention is given to crimes involving public drunkenness, the illegal sale of narcotics, disturbing the peace, and disorderly conduct. These crimes are reviewed when considering the issuance of an alcohol license. Below is a breakdown of similar types of calls within 500 feet of the site during 9/1/2016 and 9/12/2017.

- Disturbance (assaults)- 6 incidents
- Public Intoxication - 4 incidents
- Narcotics - 1 incidents
- Municipal Code Violations - 17 incidents

The total call volume City-wide for the same time period was 71,637 calls. The calls within 500 feet of the subject site equate approximately 0.58 %of the total call volume within the City of Merced for that time period. The number of incidents within the surrounding area is considered high by Merced Police Department standards (Attachment 10). However, most of these incidents were not related to

alcohol and a substantial majority of these incidents occurred away from the shopping center at the apartments to the north, across Olive Avenue (Attachments 11, 12, and 13).

#### Applicant's Reason to Support Public Convenience or Necessity

The applicant, has provided information regarding reasons for supporting a Finding of Public Convenience or Necessity. They cite several reasons to support the issuance of a Type 20 License including the convenience of purchasing alcohol while shopping for other items found at Madira Land Convenience Store, the distinction between Madira Land Convenience Store and large supermarkets, and their dedication to being a good neighbor by keeping their site clean and providing security cameras onsite to help reduce criminal activity. More detailed information supporting this request can be found in the letter at Attachment 15.

#### Council Action:

##### Option #1

After considering all the facts provided and the factors that may be considered for determining public convenience or necessity, if the City Council finds the public convenience or necessity would be served by the issuance of an off-sale license to sell beer and wine, the City Council should authorize the Director of Development Service, or their designee, to draft a letter of support to ABC for the issuance of a Type 20 License based on the reasons described in Attachment 15. Staff is recommending Option #1.

##### Option #2

If the City Council determines public convenience or necessity would not be served by the issuance of a Type 20 license (off-sale general) at this location, the City Council should direct the Director of Development Services, or their designee, to draft a letter opposing the issuance of this license. Specific reasons/findings for denial would need to be cited in the City Council motion.

#### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

#### **ATTACHMENTS**

1. Attachment 1 - Provisions of Undue Concentration
2. Attachment 2 - Factors in Determining Public Convenience or Necessity
3. Attachment 3 - Location Map
4. Attachment 4 - ABC License Type and Privileges
5. Attachment 5 - Site Plan
6. Attachment 6 - Floor Plan
7. Attachment 7 - Elevations
8. Attachment 8 - ABC Census 10.03 Tract Map
9. Attachment 9 - ABC Census 10.03 Address Chart
10. Attachment 10 - City-Wide Crime Map
11. Attachment 11 - Incident Map Near Subject Site (within 500-foot Radius)
12. Attachment 12 - Incident Map (Residential)
13. Attachment 13 - Incident Map (Commercial)

- 14.Attachment 14 - Sensitive Uses Map
- 15.Attachment 15 - Letter from Applicant
- 16.Attachment 16 - Draft Conditions of Approval (CUP #1219)