



## Legislation Text

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**File #:** 16-070, **Version:** 1

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**SUBJECT:** 2020 East Childs Avenue - Land Use Determination 16-01. Finding of Public Convenience or Necessity to Allow Beer and Wine to Be Sold for Off-site Consumption at an Arco AM/PM Gas Station and Convenience store.

### 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 at a proposed Arco/AM/PM Gas Station and Convenience Store to be located at the southwest corner of Childs and Parsons Avenue (2020 East Childs Avenue).

### 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 the proposed Arco/AM/PM Gas Station Mini-Mart to be located at the southwest corner of Childs and Parsons Avenue.

### ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to other factors than recommended by staff; or,
3. Deny based on specific findings; or
4. Refer back to staff for reconsideration of specific items as requested by Council; or, Continue to a future meeting (date and time to be specified in the motion).
5. Continue to a future meeting (date and time to be specified in the motion).

### AUTHORITY

Business and Profession Code Section 23958 and 23958.4.

### DISCUSSION

State law mandates that ABC deny the issuance of a license to sell alcohol if the area 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 the 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 is already covered by the factors used to determine undue concentration. Factors that may be used in determining a Finding of “public convenience or necessity” are found at Attachment 2.

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 selling alcohol, the number of crimes in the area, the proximity to residential uses, the type of business or operation, or other factors the 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 for Undue Concentration” found at Attachment 1.

#### Applicant Information

The proposed Arco/AM/PM convenience store and gas station would be located at the southwest corner of Childs and Parsons Avenues (Attachment 3). The convenience store would be approximately 3,180 square feet. The gas station would provide eight fueling dispensers and a car wash would also be provided. Refer to the Site Plan at Attachment 4 to see the layout of the site.

The business would be owned and operated by Sater Oil International. This company owns and operates 31 locations within the Central Valley and Southern California (refer to Attachment 5). The sale of beer and wine is a typical product sold at their other locations. As such, they have invested an immense amount of time in developing and perfecting training programs for their employees. Details regarding their operation are available at Attachment 6.

According to the applicant’s request found at Attachment 6, the sale of alcoholic beverages comprises a small percentage of the merchandise stocked and sold in their stores. However, it is an integral component of their success. The business would be open 24-hours a day and would typically have four to six employees during peak business hours. This company prides themselves in working with the community to build attractive businesses that complements the community as a whole and to provide a safe location for their employees and customers.

#### Background

In 2011, the Planning Commission approved Conditional Use Permit (CUP) #1158 for this site which included the approval of “off-site” alcohol sales from the convenience store, subject to the City Council making a Finding of Public Convenience or Necessity. The Planning Commission Resolution is available at Attachment 7. Conditions #10 through #18 of the resolution address the sale of alcoholic beverages. Condition #14 prohibits the sale of beer and wine coolers being sold as “singles.” The applicant may seek a revision to this condition in the future. In discussing the possibility of revising this condition in the future, the Police Department indicated they would not be supportive of allowing single-serve containers smaller than 32 ounces to be sold. In order to revise this condition, the applicant would need to go back to the Planning Commission for their consideration of a revision to the condition.

In accordance with the Conditions of Approval for CUP #1158, Site Plan Review was required for the specific uses to be located on this site prior to construction. On March 3, 2016, the Site Plan Review Committee approved Site Plan #395 for this site which included the proposed gas station, convenience store, and car wash, as well as a fast-food restaurant to the south of the convenience store. Site Plan Resolution #395 is provided at Attachment 8 without the Exhibits, which are repetitive of information provided elsewhere in this report.

#### Census Tract and Over-concentration

This site is located within Census Tract 17.00. According to ABC, this census tract is allowed 5 off-sale licenses. Currently 9 off-sale licenses exist in this census tract (Attachment 10). The map at Attachment 9 shows the location of the existing licenses. There are 5 off-sale beer and wine licenses and 4 off-sale general licenses.

#### Sensitive Uses

The proximity of a business to residential uses, schools, churches, hospitals, or other “sensitive uses” may also be a cause for ABC to deny the issuance of a license. The map at Attachment 10 shows there is one school (Golden Valley High School) and a number of multi-family residential units within 600 feet of the site.

#### Crime in the area

According to information from the Merced Police Department, this area has seen a moderate to high number of criminal incidents for 2015 (see map at Attachment 11). For 2015, there were a total of 521 incidents reported within 600 feet of the project site. When considering crime related to the issuance of an alcohol license and the issue of over-concentration, particular attention should be given to crimes involving public drunkenness, the illegal sale of narcotics, disturbing the peace, and disorderly conduct. Below is a breakdown of similar types of incidents within 600 feet of the subject site for 2015.

<b>Incidents within 600 feet of 2020 E. Childs Avenue 1/2/2015 to 12/31/2015</b>	
<b>Incident Type</b>	<b>Number of Incidents</b>
Disturbance	79
Assaults	8
Drunk Driver	4
Public Intoxication	7
Narcotics	3

The number of calls city-wide for 2015 were 62,206. The percentage of calls within 600 feet of the project site was equal to 0.8% of the total call volume for the year.

#### Applicant's Reasons to Support a Finding of Public Convenience or Necessity

The applicant provided information regarding their business model and experience. They stated that providing a safe environment for their employees and customers is very important. Although the sale of alcoholic beverages is only a small part of their business, it is an important part and they feel they would be providing a convenience to their customers as well as the community by being able to offer beer and wine for sale. It is common for customers to stop in for gasoline or another small item and for customers to be able to purchase beer and wine would be a convenience for the customer.

The applicant is aware of the close proximity of the school in relation to their site. As described in their letter at Attachment 6, Sater Oil International has invested a lot of time in developing and perfecting training programs for their employees. The site would be provided with video surveillance and they are committed to abiding by the conditions of approval for CUP #1158.

## **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 Council finds that public convenience or necessity would be served by the issuance of an off-sale license to sell beer and wine, the Council should authorize the Director of Development Services, or his designee, to draft a letter of support to ABC for the issuance of a Type 20 License (off-sale beer and wine) allowing the sale of beer and wine for off-site consumption based on the information provided by the applicant at Attachment 6.

### Option #2

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

## **ATTACHMENTS**

1. Provisions for Undue Concentration
2. Factors for determining Public Convenience or Necessity
3. Location Map
4. Site Plan
5. Information on Sater Oil
6. Request from Sater Oil
7. Planning Commission Resolution #2983 for CUP #1158
8. Site Plan Resolution #395
9. Map - Existing Licenses in Census Tract 17
10. Map - Sensitive Uses
11. Hot Spot Map