



Legislation Text

File #: 16-585, **Version:** 1

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SUBJECT: Land Use Determination #16-02 - Finding of Public Convenience or Necessity for Jessi's Market located at 110 E. 13th Street.

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 a change in existing alcohol license issued for Jessi's Market (located at 110 E. 13th Street) from a Type 20 (off-sale beer and wine) to a Type 21 (off-sale general allowing the sale of beer, wine, and distilled spirits).

RECOMMENDATION

City Council - Adopt a motion approving the Finding of Public Convenience or Necessity to allow Jessi's Market, located at 110 E. 13th Street, to obtain a Type 21 license for off-sale general allowing the sale of beer, wine, and distilled spirits (Option #1 as shown in the "Council Action" section of this Administrative Report).

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 Police Department has not had any particular issues associated with Jessi's Market or their management of alcohol sales since they have started selling alcohol in 2012.

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.

Jessi's Market

Jessi's Market is located at 110 E. 13th Street (Attachment 3) and has been in operation since 2012. At the time of opening they obtained a Type 20 License (off-sale beer and wine). Jessi's Market is currently seeking approval to obtain a Type 21 License (off-sale general) which would allow the sale of beer, wine, and distilled spirits (Floor Plan at Attachment 5). The store is located within Census Tract 16.01 which is allowed three off-sale licenses. However, there are currently six active licenses resulting in an "undue concentrated" census tract. If the Type 21 License is approved, Jessi's Market will surrender their Type 20 License. When a license is surrendered, it is no longer active, but the owner can transfer it to another location or re-activate it at a later date. The transfer or re-activation must occur within one year of the date the license is surrendered.

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. The subject site has high density residential uses to the northeast (across 13th Street) and south (across an alley). A City park is located within 150 feet of the subject site and a school located within 200 feet. The map at Attachment 6 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 7, 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 moderate concentration of incidents between 11/1/2015 and 10/31/2016. Within this time period, there were a total of 183 incidents within 500 feet of Jessi's Market. Typically, particular attention is given to crimes involving public drunkenness, the illegal sale of narcotics, disturbing the peace, and disorderly conduct 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 11/1/2015 and 10/31/2016.

- Disturbance - 29 incidents
- Assaults - 6 incidents
- Public Intoxication - 1 incidents
- Narcotics - 3 incidents
- Municipal Code Violations - 4 incidents

The total call volume City-wide for the same time period was 63,204 calls. The calls within 500 feet of Jessi's Market equate approximately 0.28 %of the total call volume within the City of Merced for that time period. As previously mentioned, the number of incidents within the surrounding area is considered moderate by Merced Police Department standards.

Applicant's Reason to Support Public Convenience or Necessity

The applicant, Jammu & Kashmir, Inc. DBA Jessi's Market, 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 21 License including the convenience of purchasing alcohol while shopping for other items found at Jessi's Market, the distinction between Jessi's Market 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 7.

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, wine, and distilled spirits, 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 21 License based on the reasons described in Attachment 7.

Option #2

If the City Council determines public convenience or necessity would not be served by the issuance of a Type 21 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 - Floor Plan
6. Attachment 6 - Sensitive Uses Map
7. Attachment 7 - Letter from Applicant