



## Legislation Text

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**File #:** 18-384, **Version:** 1

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**SUBJECT:** Land Use Determination #18-01 - Finding of Public Convenience or Necessity for Cardenas Market Located at 1136 W. Main Street

### REPORT IN BRIEF

This report provides options for the City Council to consider making a Finding of Public Convenience or Necessity (PCN), as required by the Department of Alcoholic Beverage Control (ABC) to issue a Type 21 alcohol license (off-sale general allowing the sale of beer, wine, and distilled spirits) for Cardenas Market located at 1136 W. Main Street.

### RECOMMENDATION

**City Council** - Adopt a motion approving the Finding of Public Convenience or Necessity to allow Cardenas Market, located at 1136 W. Main 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. As shown at Attachment 5, the subject site is located within a Census Tract (13.01) that is considered over-concentrated with alcohol licenses for off-site consumption (Types 20 and 21). Census Tract 13.01 is allowed 2 off sale alcohol licenses, there are currently 10 active licenses within this census tract, and with the approval of this request, there would be 11. 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.

### Cardenas Market

Cardenas Market is an ethnic grocery store that has been in operation for over 20 years. Their headquarters are located at Ontario, California, and they have over 56 grocery stores throughout three different states (California, Nevada, and Arizona). Cardenas Market is currently in the process of remodeling the building located at 1136 W. Main Street, near the northwest corner of 16<sup>th</sup> Street and R Street. As shown on the floor plan at Attachment 6, the 36,500-s.f. grocery store will include a food court, butcher shop, bakery, produce section, deli section, and frozen food section. Alcohol sales are considered ancillary to other items sold at the grocery store. Beer and wine would be stocked at the center of the store, between the frozen food section and the sales floor area. Liquor would be stocked elsewhere, inside the check cashing office near the main entrance, within a secured location. This building was formerly occupied by Save Mart who sold alcohol at this site for many years. Save Mart vacated this site in 2012, and the building has remained vacant ever since. The Police Department noted that they do not have any records showing unusual or excessive problems associated with alcohol sales while Save Mart occupied this site.

### 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 nearest residential zone is located approximately 650 feet north of the subject site, at the intersection of 19<sup>th</sup> Street and R Street. The nearest school (John C. Freemont) is located 1,200 feet north of the subject site, with the nearest classrooms being approximately 1,800 feet away from the subject site at the southwest corner of R Street and 22<sup>nd</sup> Street. The nearest park (Merced County Court House Square Park) is located approximately 2,000 feet away from the subject site at the northeast corner of O Street and 20<sup>th</sup>

Street. The map at Attachment 7 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 8, 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 very high concentration of incidents between 7/1/2017 and 7/28/2018 (Attachment 9). Within this time period, there were a total of 1,072 incidents within 500 feet of the soon to open Cardenas Market (Attachment 10). Typically, particular attention is given to incidents 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 7/1/2017 and 7/28/2018.

- Disturbances - 103 incidents
- Assaults - 10 incidents
- Public Intoxication - 0 incidents
- Narcotics - 6 incidents
- Municipal Code Violations - 80 incidents

The total call volume City-wide for the same time period was 81,754 calls. The calls within 500 feet of Cardenas Market equate approximately 0.24% 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 very high by Merced Police Department standards. However, the Police Department supports this request for a Finding of Public Convenience or Necessity.

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

The applicant, Cardenas 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 Cardenas Market, 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 8.

### 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 8.

## 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. Provisions of Undue Concentration
2. Factors in Determining Public Convenience or Necessity
3. Location Map
4. ABC License Type and Privileges
5. ABC Census Tract Map
6. Floor Plan
7. Sensitive Uses Map
8. Letter from Applicant
9. City Wide Crime Hot Spot Map
10. Incidents within 500 feet of Subject Site