



Legislation Text

File #: 19-239, **Version:** 1

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SUBJECT: Approval of a Finding of Public Convenience or Necessity to Allow Beer and Wine Sales for Off-Site Consumption for Exxon Mobil/Mobil Mart Located at 782 Carol Avenue (Land Use Determination #19-01)

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 Exxon Mobil/Mobil Mart located at 782 Carol 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 Exxon Mobil/Mobil Mart located at 782 Carol Avenue.

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 8, the subject site is located within a Census Tract (17.00) that is considered over-concentrated with alcohol licenses for off-site consumption (Types 20 and 21). Census Tract 17.00 is allowed 5 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.

Exxon Mobil/Mobil Mart

Exxon Mobil/Mobil Mart will be located within a new 4,900-square-foot building. Attachments 5 and 7 show the proposed site plan and elevations. The floor plan at Attachment 6 shows the building layout with space dedicated for snacks (on racks and shelves), a food court, restrooms, office, cashier, and a beer cave located at the northeast corner of the building. The conditional use permit for this site (CUP #1213) limits the sale of alcohol to 2 cooler spaces or 20-square-feet (typical for a convenience market).

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 to the north adjacent to the subject site. The nearest school (Golden Valley High School) is located approximately 750 feet east of the subject site. The nearest park (Joe Herb Community Park) is located approximately 1,000 feet away from the subject site at the northeast corner of N. Parsons Avenue and Merced Avenue. The map at Attachment 11 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 12, 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 6/1/2015 to 6/1/2016 (Attachment 9), during the time that the Conditional Use Permit for this site was processed. Within this time period, there were a total of 607 incidents within 500 feet of the subject site (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 between 6/1/2015 to 6/1/2016:

- Disturbances/Assaults - 96 incidents
- Public Intoxication - 4 incidents
- Narcotics - 3 incidents
- Municipal Code Violations - 27 incidents

The total call volume City-wide for the same time period was 63,024 calls. The calls within 500 feet of the subject site equate approximately 0.96% of the total call volume within the City of Merced for that time period. Updated statistics were not available at the time this report was prepared, but the Police Department verbally indicated that the above statistics were in line with current calls for service. As previously mentioned, the number of incidents within the surrounding area is considered 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, Exxon Mobil/Mobil Mart, 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 Mobil 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 12.

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 Services, or designee, to draft a letter of support to ABC for the issuance of a Type 20 License.

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 beer and wine) at this location, the City Council should direct the Director of Development Services, or 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. Site Plan
6. Floor Plan
7. Elevations
8. ABC Census 17 Tract Map
9. City-Wide Crime Map
10. Incident Map Near Subject Site (within 500-foot Radius)
11. Sensitive Uses Map
12. Letter from Applicant
13. Conditions of Approval (CUP #1213)