



## Legislation Text

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**SUBJECT:** Land Use Determination #20-01 - Finding of Public Convenience or Necessity for Insanity Nightclub Located at 427 and 429 W. Main Street as Required by the Department of Alcoholic Beverage Control to Issue a Type 48 Alcohol License Which Allows the Sale of Beer, Wine, and Distilled Spirits

### 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 48 alcohol license (on-sale general allowing the sale of beer, wine, and distilled spirits) for Insanity Nightclub located at 427 and 429 W. Main Street.

### RECOMMENDATION

**City Council** - Adopt a motion approving the Finding of Public Convenience or Necessity to allow Insanity Nightclub, located at 427 and 429 W. Main Street, to obtain a Type 48 license for on-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 (13.02) that is considered over-concentrated with alcohol licenses for on-site consumption. Census Tract 13.02 is allowed 2 alcohol licenses, there are currently 24 active licenses within this census tract, and with the approval of this request, there would be 25. The State's ABC Mapping System is currently unable to generate a map identifying the 24 active licenses, but the number of active licenses were confirmed with ABC staff. 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.

### Insanity Nightclub

Insanity Nightclub is requesting approval to serve beer, wine, and distilled spirits for on-site consumption (Type 48 Alcoholic Beverage Control License) at 427 & 429 W. Main Street. This site was previously approved for a bar and nightclub in 2012. The applicant will be utilizing the existing Conditional Use Permit (Attachment 11) and has agreed to comply with all conditions (conditions regarding security guards, hours of operation, noise, etc.).

As show on floor plan at Attachment 6, the nightclub includes 15 tables, 3 booths, a dance floor (approximately 180 square feet), a DJ stage, a bar (41 feet long), an office, a storage room, a women's restroom, and a men's restroom. This 21 & over nightclub would generally operate Thursday through Sunday from 8:30 p.m. to 1:55 a.m., and occasionally on Monday, Tuesday, or Wednesday for special events.

The subject site is located in Downtown Merced and is surrounded by a variety of commercial and entertainment businesses. Entertainment businesses are common throughout the neighborhood with the Merced Theater (live performance), 17<sup>th</sup> Street Public House (pub), Regal Hollywood (movie theatre), The Partisan (pub), O'Ryleigh's Tavern (pub), Casino Merced, Poker Flats, Merced Playhouse Merced (live theatre), and El Palacio Night Club, all located within 1,400 feet of the subject site. Given the abundance of entertainment businesses in the area, and the fact that this site was previously approved for a nightclub, staff does not anticipate that this approval would create any unusual circumstances for the neighborhood.

### 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 map at Attachment 7 shows the location of the “sensitive uses” in the area. There are residential uses located approximately 350-400 feet to the west (the Loft Apartments) and additional residential uses approximately 500 feet to the east (apartment above the Merced Theater). All of these units are located within a Central Commercial (C-C) zone. Additional residential uses in the C-C zone are located within a 600-foot and 1,000-foot radius. These are two approved churches within a 600-foot radius and another within a 1,000-foot radius.

### 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 to notify ABC of this determination.

According to the Merced Police Department, this general area had a very high concentration of incidents between 8/1/2019 and 8/18/2020. Within this time period, there were a total of 928 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 during 8/1/2019 and 8/18/2020

- Disturbances - 108 incidents
- Assaults - 7 incidents
- Public Intoxication - 3 incidents
- Narcotics - 1 incident
- Municipal Code Violations - 67 incidents

The total call volume City-wide for the same time period was approximately 77,000 calls. The calls within 500 feet of the subject site equate approximately 0.12% 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, Insanity Nightclub, 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 48 license including 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 on-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 48 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 48 license (on-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. Building Exterior
10. Density of Incidents within 500 feet of Subject Site
11. Resolution #3003 for CUP #1168 (Approval for Bar/Nightclub at this Site)