



## Legislation Text

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File #: 21-313, Version: 1

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**SUBJECT:** Approval of a Finding of Public Convenience or Necessity for the Sale of Alcohol for the New Arco AMPM to be Located at 1295 West Yosemite Avenue (Land Use Determination #21-02)

### REPORT IN BRIEF

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 20 alcohol license ("off-sale general" allowing the sale of beer and wine) for the new Arco AMPM to be located at 1295 West Yosemite Avenue.

### RECOMMENDATION

**City Council** - Adopt a motion approving the Finding of Public Convenience or Necessity to allow Arco AMPM, to be located at 1295 West Yosemite Avenue, to obtain a Type 20 ABC license for "off-sale general" allowing the sale of beer and wine (Option #1 as shown in the "Council Action" section of this Administrative Report).

### ALTERNATIVES

1. Approve, as recommended by staff (Option #1); or,
2. Approve, subject to modifications as conditioned by Council; or,
3. Deny the request completely and provide direction to staff on the reasons for denying the request (Option #2); 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. This regulation also applies if a business is applying for a new ABC license (as opposed to buying an existing license) within a Census Tract that is not over concentrated with alcohol licenses.

This is required because Merced is listed as a Moratorium City for Type 20 alcohol licenses by the Department of Alcoholic Beverage Control. In this case, Arco AMPM is purchasing a new ABC license and will be located within a Census Tract that is not over-concentrated with 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 (10.02) that is not considered over-concentrated with alcohol licenses for off-site consumption (Types 20 and 21). Census Tract 10.02 is allowed 11 off sale alcohol licenses, there is currently 1 active license within this census tract, and with the approval of this request, there would be 2. 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 the number of crimes in the area is high, 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.

### AMPM

AMPM has been in operation since 1978, and they currently have over 950 operations throughout five States. Most of their stores are combined with gas stations, where they offer a variety of snacks, beverages, and hot foods. Arco AMPM will soon be constructing a new gas station in Merced, at the northeast corner of Yosemite Avenue and El Redondo Drive (Attachment 3). As shown on the floor plan at Attachment 8, the approximate 5,000-square-foot Arco AMPM will include a sales floor area, coffee station, fountain station, walk-in coolers, snack aisles, bathrooms, register/front counter, and office space. Alcohol sales are considered ancillary to other items sold at the convenience market. Based on the approved Conditional Use Permit for this site (CUP #1253 per Planning Commission Resolution #4062, approved on April 7, 2021, shown at Attachment 12), Arco AMPM would be allowed to sell a maximum of 300 square feet of beer and wine or 6% of the floor space. As shown on the floor plan at Attachment 8, the majority of the alcohol would be stocked within the freezers and shelves located in the north-central portion of the floor plan. Police staff have reviewed this proposal and they do not anticipate this request to cause a significant adverse effect on the socio and economic well-being of the neighborhood, or to have a significant adverse effect on police resources.

### 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. Residential uses (both single-family and multi-family), and parks (Merino Park and Merced Dog Park) are located within 1,000 feet of the subject site.

### Information of Fact

In order for the City Council to make a 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 6, 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 low/moderate concentration of incidents between 3/1/2020 and 2/28/2021 (Attachment 10). This study was conducted when the applicant applied for conditional use permit approval from the Planning Commission earlier this year. Within the study period, there were a total of 607 incidents within 500 feet of the soon-to-open Arco AMPM (Attachment 11). 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 3/1/2020 and 2/28/2021.

- Disturbances (assaults) - 18 incidents
- Public Intoxication - 0 incidents
- Narcotics - 0 incidents
- Municipal Code Violations - 0 incidents

The total call volume City-wide for the same time period was 72,000 calls. The calls within 500 feet of the new Arco AMPM equate approximately 0.96% 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 low/moderate by Merced Police Department standards. 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, Arco AMPM, 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 Arco AMPM, 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 6.

### 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 Service, or their designee, to draft a letter of support to ABC for the issuance of a Type 20 License based on the reasons described in Attachment 6.

### 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 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. Letter from Applicant
7. Site Plan
8. Floor Plan
9. Elevations
10. City Wide Crime Hot Spot Map
11. Incidents within 500 feet of Subject Site
12. Planning Commission Resolution #4062