



## Legislation Text

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**SUBJECT:** Approval of Land Use Determination #23-01 - Finding of Public Convenience or Necessity for Circle K Stores, Inc., a New Gas Station and Convenience Market to be Located at the Southwest Corner of R Street and Loughborough Drive

### 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 20 alcohol license (allowing the sale of beer and wine for off-site consumption) for Circle K Stores, Inc., a new gas station and convenience market to be located at the southwest corner of R Street and Loughborough Drive.

### RECOMMENDATION

**City Council** - Adopt a motion approving the Finding of Public Convenience or Necessity to allow Circle K, Inc., a new gas station and convenience market to be located at the southwest corner of R Street and Loughborough Drive, to obtain a Type 20 license for off-site consumption 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; 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. The subject site is located within Census Tract 10.03. Merced is listed under "Moratorium City" for Type 20 alcohol licenses by the Department of Alcoholic Beverage Control. If the applicant were to use an existing alcohol license, they may not need a Finding of Public Convenience or Necessity, but because they are purchasing a new alcohol State license, they will need to obtain a Finding of Public Convenience or Necessity, which the City of Merced requires be approved by the City Council.

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 selling 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.

### Circle K Stores

Circle K Stores, Inc., is requesting approval to sell beer and wine for off-site consumption (Type 20 Alcoholic Beverage Control License) a new gas station and convenience market at the southwest corner of R Street and Loughborough Drive (currently portion of parking lot for 3275 R Street). This site received Conditional Use Permit approval from the Planning Commission to sell alcohol for off-site consumption (Attachment 9) on January 18, 2023. According to the floor plan for Circle K at Attachment 6, approximately 96 square feet would be dedicated to alcohol sales. This is approximately 3.27% of the total floor area.

### 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 uses (single-family and multi-family homes) are located within 1,000 feet of the subject site, across Loughborough Drive where there are a variety of apartment complexes. The nearest sensitive use (besides residential properties) is Fahrens Park, which is located approximately 600 feet north from the subject site with an entrance to the park being approximately 1,000 feet away from the subject site, along Buena Vista. The nearest school, Rivera Elementary and Middle Schools, is over 1,100 feet north of the subject site at the northeast corner of R Street and Buena Vista.

### 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 5, 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 moderate concentration of incidents between 12/01/2021 and 12/2/2022. Within this time period, there were a total of 121 incidents within 500 feet of the subject site (Attachment 8). 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 12/01/2021 and 12/2/2022.

- Disturbances/Assaults - 4 incidents
- Public Intoxication - 4 incidents
- Narcotics - 1 incidents
- Municipal Code Violations - 0 incidents

The total call volume City-wide for the same time period was approximately 78,000 calls. The calls within 500 feet of the subject site equate approximately 0.15 % 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 (Attachment 7). The Police Department supports this request for a Finding of Public Convenience or Necessity.

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

Circle K Stores, Inc., 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 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 5.

### 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 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 p 5.

### Council Action Option #2:

If the City Council determines public convenience or necessity would not be served by the issuance of a Type 20 license 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. Letter from Applicant
6. Floor Plan
7. City-Wide Incident Density Map
8. Density of Incidents within 500 feet of Subject Site
9. Resolution #4104 for CUP #1268 and Site Plan Review #506 (Approval for Alcohol Sales for Off-Site Consumption)