



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: April 4, 2017
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn S. Russell, Ph.D., Director 568-2085
Director Planning & Development
Contact Info: Dianne Black, Assistant Director 568-2084
Planning & Development
**SUBJECT: Public Convenience or Necessity Determination for Los Olivos Grocery
Case No. 17PCN-00000-00001**

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- a) Approve and authorize the Chair to sign the attached letter (Attachment-1) and forward the application (Attachment-2) and letter to the California Department of Alcohol Beverage Control (ABC) determining that public convenience will be served by issuing the new Off-Sale General license to the Los Olivos Grocery, located at 2621 Highway 154 in Los Olivos; and
- b) Determine that this activity is exempt from California Environmental Quality Act review per CEQA Guidelines Section 15378(b)(5) (Attachment-3); this section exempts the licensing of existing structures involving negligible or no expansion of use.

Summary Text:

On January 17, 2017, Planning and Development (P&D) received a request (ABC form 245) for a Public Convenience or Necessity (PCN) determination for the Los Olivos Grocery, located at 2621 Highway

154 in Los Olivos. The requested license would allow the sale of beer, wine and spirits for consumption off the premises where sold. P&D staff have reviewed the applicant's request, and recommend that the Board find that public convenience will be served by the ABC approval and issuance of the Off-Sale General license in this location, based on the information provided in the Background discussion, below. A transmittal letter indicating the finding of public convenience, and ABC Form 245, are attached for the Board's consideration of public convenience or necessity.

Background:

The requested license is a Type-21 Off-Sale license, which is defined as follows, "*Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.*" The request would allow the Los Olivos Grocery, a full service grocery, to sell bottled beer, wine and spirits. The Los Olivos Grocery currently holds a Type-41 On-Sale license, which "*Authorizes the sale of beer and wine for consumption on or off premises where sold,*" and "*must operate and maintain the licensed premises as a bona fide eating place.*" The applicant would cancel their Type-41 license in the event that they obtain the requested Type-21 license.

The Department of Alcoholic Beverage Control (ABC) establishes a threshold for the number of licenses, including Type-21 licenses, issued in each census tract in order to control the concentration of establishments granted licenses for the sale of alcohol for consumption off the premises where sold (classified as "Off-Sale" licenses).(Bus. & Prof. Code § 23817.) The threshold is the ratio derived from the number of Off-Sale licenses County-wide compared to the County's total population. Any census tract that exceeds the threshold for Off-Sale retail licenses is deemed a census tract of "undue concentration." Undue concentration may also be deemed to exist if "*the applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes . . . than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.*" Census tract 19.05 has a population of 3,231 and is allowed 3 off-sale licenses¹. There are currently 21 existing off-sale licenses within census tract 19.05, 18 more than allowed by concentration criteria. Therefore, pursuant to the ABC, undue concentration exists in census tract 19.05.

Undue concentration may also be deemed to exist if "*the applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes . . . than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.*" (Bus. & Prof. Code § 23958.4(a)(1).) Pursuant to the Santa Barbara County Sheriff's Office, the property is not in a reporting district that has a 20 percent greater number of reported crimes than the average number of reported crimes in the Santa Ynez Valley jurisdictional area. Therefore, undue concentration does not exist based upon crime data.

When a census tract is subject to an undue concentration of off-sale licenses, Business and Professions Code Section 23958.4(b)(2) provides that ABC may issue a license if the local governing body (County Board of Supervisors) "*determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance.*" If, within 90 days, the local governing body

¹ Data obtained from the ABC Census Tract Authorizations (All Counties) report

finds that public convenience or necessity for the license has not been demonstrated, ABC will not likely issue the license.

The following table summarizes and defines the number of off-sale licenses in census tract 19.05:

Off-sale Licenses in Census Tract 19.05 (Per the California ABC License Query System)		
ABC License Type	Definition	Number
Type 20 (stand alone)	Authorizes the sale of beer and wine for consumption off the premises where sold.	1 (Zaca Lake Retreat)
Type 20 combined with a Type 17	When a Type 20 is combined with a Type 17, it allows: <ul style="list-style-type: none"> • Sale of wine only (per ABC) • Electronic/internet retail sales to consumers (no brick and mortar store) • Electronic/internet or direct sales to other wholesalers or retailers 	19
Type 21	A Type 21 authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold.	1 (R Country Market)
Total “Brick and Mortar” Licenses	-----	2
Total Electronic-Only Licenses	-----	19
Grand Total	-----	21

According to ABC, 19 of the existing off-sale licenses allow internet/electronic sales only. These licenses do not allow a “brick and mortar” location. Therefore, there are only 2 existing “brick and mortar” locations in the census tract. The “two brick and mortar” off-sale establishments have been issued to businesses at 800 Zaca Station Road (Zaca Lake Retreat) and 2948 Grand Avenue (R-Country Market) and are approximately 12 miles and 2.7 miles, respectively, from the proposed Los Olivos Grocery off-sale location. The “electronic/internet sales only” licenses may be obtained directly from ABC and are not required to obtain a PCN determination from the County when undue concentration exists (see Bus. & Prof. Code, § 23393.5.). The “brick and mortar” locations are required to obtain a PCN determination from the County when undue concentration exists (Bus. & Prof. Code, § 23958.).

Within the subject census tract, only the R-Country Market provides area residents with the ability to purchase grocery items together with beer, wine, and spirits. Zaca Lake Retreat sells only beer and wine

and is not open to the public. The remaining Off-Sale licenses are “electronic/internet sales only” licenses that do not provide a physical location for residents to purchase alcohol. As stated in the letter from the applicant (Attachment-5) the applicant is requesting the license in order to provide a full service grocery store and to respond to customer requests. Further, the applicant intends to “suspend” (cancel) the Type-41 license that they currently hold. Therefore, the Grocery will no longer be able to sell beer and wine for on-site consumption, but will now be able to sell spirits (in addition to the already available beer and wine) for off-site consumption. The property is not located within a census tract of undue concentration due to crime levels, and the applicant submitted a letter of support from Dunn School (Attachment-6). The requested license would serve public convenience by providing a second location within the census tract which would allow residents to purchase beer, wine, and spirits for off-site consumption together with grocery items. Therefore, it is recommended that the Board determine that public convenience will be served by issuing the new Off-Sale General license to the Los Olivos Grocery.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

There is no fee to the applicant for the processing of a Public Convenience or Necessity request. The total estimated cost to process this request is approximately \$1,923 (10 staff hours), and is budgeted in the Planning and Development Permitting Budget Program on page D-289 of the adopted 2016-2018 fiscal year budget. There are no facilities impacts.

Special Instructions:

The Clerk of the Board shall obtain the signature of the Chair of the Board of Supervisors and send the executed letter and application to: Department of Alcohol Beverage Control, Attention Matt Austin, 3220 S. Higuera Street, Suite 233, San Luis Obispo, CA 93401

The Clerk of the Board shall forward a copy of the Minute Order to P&D, Attn: David Villalobos and a second copy of the Minute Order to P&D, Attn: Nicole Lieu.

Attachments:

1. Board of Supervisors letter to State Department of Alcohol Beverage Control
2. Alcohol Beverage Control Form ABC 245
3. CEQA Exemption
4. Letter from Applicant, dated January 26, 2017
5. Letter from Agent for Applicant, dated January 5, 2017
6. Letter of Support from Dunn School, dated February 10, 2017

Authored by:

Nicole Lieu, Senior Planner