



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: June 27, 2023
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Planning and Development
Director(s) Lisa Plowman, Director, (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, (805) 568-2518

SUBJECT: Public Convenience or Necessity Determination for Old Town Biergarten LLC,
Old Town Orcutt Area, Case No. 23PCN-00001, Fourth Supervisorial District.

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: N/A

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 and necessity will be served by issuing the new On-Sale Beer – Eating Place (Type 40) license to Oldtown Biergarten LLC, located at 125 S. Broadway Street in Old Town Orcutt, with Assessor’s Parcel Number 105-091-003; and
- b) Determine that the proposed action is an administrative activity of the County, which will not result in direct or indirect physical changes in the environment and is therefore not a “project” as defined for the purposes of the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15378(b)(5).

Summary Text:

On April 3, 2023, Planning and Development (P&D) received a request (ABC-245 Form) for a Public Convenience or Necessity (PCN) determination at 125 S. Broadway Street in Old Town Orcutt. The requested Type 40 “On-Sale Beer” license would allow the sale of beer for consumption on the premises where sold. P&D staff has reviewed the applicant’s request, and recommends that the Board find that public convenience and necessity will be served by ABC approval and issuance of the “On-Sale Beer” license in this location, based on the information provided in the Background discussion below. A transmittal letter indicating the finding of public convenience, and the ABC-245 Form, are attached for the Board’s consideration.

Background:

The requested license is a Type-40 On-Sale license, which is defined as follows:

Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.

(Link: <https://www.abc.ca.gov/licensing/license-types/>)

The approval of this request will allow Old Town Biergarten to sell beer as described above. The subject application is for 125 S. Broadway Street in Old Town Orcutt, which is located in Census Tract 20.12. The census tract contains approximately 2,900 people and encompasses a 1.2 square mile area. The census tract extends roughly north to southwest from West Foster Road to the Cabrillo Highway from the Santa Maria Airport to Old Town Orcutt.

The Department of Alcoholic Beverage Control (ABC) establishes a threshold for the number of licenses, including Type 40 licenses, issued in each census tract in order to control the concentration of establishments granted licenses for the sale of alcohol for consumption on the premises where sold (classified as “On-Sale” licenses) [Bus. & Prof. Code § 23816]. The threshold is the ratio derived from the number of on-sale licenses County-wide compared to the County’s total population. Any census tract that exceeds the threshold for on-sale retail licenses is deemed a census tract of “undue concentration.” Census Tract 20.12 has a population of approximately 2,900, and is allowed six on-sale licenses (per the ABC Census Tract Authorizations “All Counties” report). There are currently nine active existing on-sale licenses within Census Tract 20.12. Therefore, pursuant to ABC standards, undue concentration exists in Census Tract 20.12.

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).] According to the Santa Barbara County Sheriff’s Office, the property is not located in a reporting district that has a 20 percent greater number of reported crimes than the average number of reported crimes within ALL reporting districts.

When a census tract is subject to an undue concentration of on-sale licenses, Business and Professions Code Section 23958.4(b) 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. The 90-day period shall commence upon receipt*

by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.” If the Board of Supervisors (BOS) does not make a determination within the 90-day period, then the ABC may issue a license if the applicant shows the department that public convenience or necessity would be served by the issuance. In this particular case, the applicant submitted a complete application on April 3, 2023, and a determination by July 2, 2023, would be within the 90-day period.

The following table summarizes and defines the number of on-sale licenses in Census Tract 20.12:

On-Sale Licenses in Census Tract 20.12 (Per the California ABC License Query System)		
ABC License Type	Definition	Number
Type 41	On-Sale Beer & Wine – Eating Place – (Restaurants). Authorizes the sale of beer and wine for consumption on or off the premises where sold.	2 Examples: Jacks of Old Orcutt, Patricio’s Pizza
Type 42	On-Sale Beer & Wine – Public Premises – (Bar, Tavern). Authorizes the sale of beer and wine for consumption on or off the premises where sold.	4 Examples: Steller Cellar, Lark Sparrow, Old Town Wine and Brew, Board and Brush Creative Studio Orcutt
Type 47	On-Sale General – Eating Place – (Restaurant). Authorizes the sale of beer, wine, and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises.	1 Example: R Bar at Kay’s Country Kitchen
Type 48	On-Sale General - Public Premises (Bar, Night Club). Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.	1 Example: Elmer’s Bar
Type 75	Brewpub-Restaurant – (Restaurant). Authorizes the sale of beer, wine and distilled spirits for consumption on a bona fide eating place plus a limited amount of brewing of beer. This license does not authorize the sale of alcoholic beverages for consumption off the	1 Example: Blast 825 Brewery

	premises where sold. Minors are allowed on the premises.	
Total	-----	9

Within the subject census tract, 44 percent of establishments with an on-sale license are eating places, and the other 56 percent are bars, taverns, or night clubs. There are no existing on-sale licenses that are Type 40 in the census tract. As stated in the letter from the applicant (Attachment 3), the proposed Old Town Biergarten is intended to provide consumers with premium hard-to-find beers by offering a broad selection of local, regional, American, and international beers. The applicant asserts that the garden atmosphere is a different approach to the existing consumption experience in Downtown Orcutt. The applicant also states that South Broadway location is walkable for residents and tourists of downtown Orcutt. The property is not located within a census tract of undue concentration due to crime levels, and the requested license would serve public convenience by: (a) bringing an eclectic curated selection of locally, regionally, nationally, and international produced beers; and (b) providing a convenient location for local patrons and business professionals, along with patrons visiting Orcutt’s historic sites and shopping district.

Therefore, it is recommended that the Board determine that public convenience will be served by issuing the new Type 40 “On-Sale Beer” license to the Old town Biergarten in Downtown Orcutt.

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 \$3,000 (12 staff hours), and is budgeted in the Planning and Development Permitting Budget Program on page 387 of the County of Santa Barbara Fiscal Year (FY) 2022-23 adopted budget.

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, Attn: Cindy Stuppy, 3220 S. Higuera Street, Suite 103A, San Luis Obispo, CA 93401.

The Clerk of the Board shall forward copies of the signed Board of Supervisors Letter to State Department of Alcohol Beverage Control and the Minute Order to P&D, Attn: David Villalobos and to P&D, Attn: Francisco Vargas.

Attachments:

1. Board of Supervisors letter to State Department of Alcohol Beverage Control
2. Alcohol Beverage Control Form ABC 245
3. Letter of Public Convenience from Applicant

Authored by:

Francisco Vargas, Planner