

REPORT TO THE CITY COUNCIL

City of Salinas, California

DATE: March 7, 2017

FROM: Megan Hunter
Community Development Director

THROUGH: Courtney Grossman
Planning Manager

BY: Thomas Wiles
Senior Planner

SUBJECT: **APPEAL OF PLANNING COMMISSION DENIAL OF CONDITIONAL USE PERMIT 2016-019; A REQUEST TO ESTABLISH AND OPERATE AN OFF-SALE ALCOHOL RELATED USE (TYPE 20) AT AN EXISTING SERVICE STATION AND CONVENIENCE STORE WITH GAS PUMPS USE LOCATED AT 201 MONTEREY STREET IN THE MIXED USE – CENTRAL CITY OVERLAY – DOWNTOWN CORE AREA (MX-CC-DC) ZONING DISTRICT (CUP 2016-019)**

RECOMMENDATION:

It is recommended that the City Council uphold the Planning Commission denial on January 18, 2017 of Conditional Use Permit 2016-019 [a request to establish and operate an alcohol related use consisting of a beer and wine off-sale license (Type 20) at an existing service station and convenience store with gas pumps located at the above referenced address.]

DISCUSSION:

BACKGROUND

The Property and Proposed Project

3D Investment Group, Incorporated is requesting approval of a Conditional Use Permit (CUP) to establish and to operate an alcohol related use consisting of a beer and wine off-sale license (Type 20) at an existing service station and convenience store with gas pumps (License No. 575625) located at 201 Monterey Street in the downtown area at the southeast corner of Monterey Street and East Gabilan Street.

The property is located in the Mixed Use – Central City Overlay – Downtown Core Area (MX-CC-DC) Zoning District. The following provides an overview of the land uses and zoning districts adjacent to the project site:

North: Retail / MX-CC-DC (Mixed Use – Central City Overlay – Downtown Core Area)

South: Restaurant & Parking / MX-CC-DC (Mixed Use – Central City Overlay – Downtown Core Area)

East: Residential / MX-CC-DN (Mixed Use – Central City Overlay – Downtown Neighborhood Area)
West: Commercial / MX-CC-DC (Mixed Use – Central City Overlay – Downtown Core Area)

The Applicant recently purchased the subject property and has stated that the requested off-sale alcohol related use is required in order for the business to be economically viable. The Applicant is proposing to upgrade the site such as repair and cleanup of the existing fuel islands and canopy, new paint and signs, and interior improvements to the existing convenience store/service station building. Signs will be subject to a separate permit process. A quick review of the site suggests several signs may have been installed by a prior owner/operator without benefit of proper permits. This issue would need to be resolved before the new proposed operation could commence. The Applicant currently operates a similar off-sale alcohol license in Redwood City and has been recognized for his operations in that location (see attached).

For purposes of the off-sale Type 20 alcohol license, per Salinas City Code Section 37-50.030(c), a CUP is required for all alcohol-related uses, with a limited exception for cases as provided in Section 37-50.030(g), none of which are applicable here. Following City approval of the Conditional Use Permit, the Applicant would be required to obtain a Type 20 (Off-Sale Beer and Wine) Alcohol License from the State Department of Alcoholic Beverage Control (ABC). The Applicant is currently working on an agreement to purchase a surrendered Type 20 off-sale alcohol license (License No. 400231) from a location in Seaside, and transfer it to the project site in the City of Salinas.

Planning Commission Policy Regarding Alcohol-Related Uses

During its consideration of the matter, the Planning Commission discussed the Commission's existing policy and its impact on this application. On April 20, 2016, the Planning Commission requested a study session regarding alcohol license processing following a pair of Planning Commission decisions that were overturned by the City Council. The Planning Commission indicated a concern that the final outcomes involving Conditional Use Permits for alcohol licenses in areas of undue concentration needed additional clarity. At a September 21, 2016 study session, the Planning Commission requested staff to provide a summary of past practice for which Conditional Use Permit decisions were based. Zoning Code findings for alcohol-related Conditional Use Permits require consideration of the following: distance of the proposed use from other alcohol-related uses, residentially zoned property, public schools, public playgrounds, and other similar uses; and giving further consideration to crime rates, calls for emergency services, and residential densities in the surrounding area. Results of the research are summarized in an attached table entitled "Off-sale alcohol license CUP's since 2010".

At a follow up October 19, 2016 Study Session, the Planning Commission determined that a One-for-One policy should be required for off-sale licenses located in areas of undue concentration. A One-for-One policy requires elimination of one existing, active off-sale alcohol-related use within City limits to be either from an area of "undue concentration" (based on either the number of retail off-sale ABC licenses or the number of reported crimes) or a nonconforming use (i.e., without a Conditional Use Permit). A One-for-One option could include a provision allowing the Permittee to obtain and transfer a "surrendered" (non-active) ABC license that has been out of operation for more than 180 days from the date of approval of the CUP, provided such license is located in the City of Salinas and is from an area of area of "undue concentration." In effect, a One-for-One requirement results in a no net gain in the number of off-sale licenses. See Analysis below for additional One-for-One Policy discussion.

ANALYSIS

Undue Concentration

There are two ways to measure "undue concentration". The proposed location is within Census Tract 13 (CT 13) which is currently undue concentrated pursuant to statewide guidelines. For this purpose, "undue concentration" is a formula defined in California Business and Professions Code Section 23958.4(a)(3) where the ratio of off-sale retail licenses to population in the census tract or census division in which the premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the premises are located, as determined by ABC based on the number of existing retail off-sale ABC licenses.

There are eight (8) active off-sale licenses within CT 13 which are shown on the attached Map and ABC Off-sale Licenses for Census Tract 13. The map is focused on the licenses within City limits. The closest off-sale license to the project site is located at 201 East Alisal Street (Fresh Market and Produce), which is approximately 970 feet to the southeast. Per ABC, two (2) off-sale licenses are allowed in CT 13 in 2016 (see attached Number of Licenses Authorized by Census Tract), which is less than the three (3) which were permitted in 2011. With this proposal, a total of nine (9) off-sale licenses would exist in CT 13. Because the proposed site is located within an area of undue concentration, if the City Council desires to approve the proposed CUP it must first establish a finding that Public Convenience or Necessity is served by approving an off-sale alcohol use at this location.

Undue concentration is also measured by crime statistics where, as here, the crimes reported in the Police Reporting District (PRD) exceed 20% of that measured city-wide. State law allows the City to analyze off-site alcohol sales proposals for undue concentration based on reported crimes in police PRD 132 where the proposed site is located. For this analysis, "undue concentration" is analyzed under a different provision of state law, California Business and Professions Code Section 23958.4(a)(1), as a premises located in a crime reporting district that has a 20% greater number of reported crimes than the average number of crimes reported by the police department across all PRD's. This is measured by examining the most recent yearly statistics of violent and non-violent enumerated crimes, both felonies and misdemeanors (except traffic violations) with the average number of reported crimes from all PRD's within the jurisdiction. Crimes need not be alcohol related. Salinas Police Department reports an average of 104.71 reported crimes across all PRD's for 2014, the most recent date of PRD records. Adding 20%, the formula allows for no more than 125.652 reported crimes within this PRD to avoid the "undue concentration" designation. The 2014 Salinas Police Department (SPD) crime statistics indicated 356 reported crimes in PRD 132, which exceeds the 125.652 threshold, indicating that it is appropriate to label the site within an area of undue concentration. Per the Police Department comments, this is well above the average crime rate. Staff notes that the Salinas Police Department however, does not object to the approval of Conditional Use Permit 2016-019 with conditions of approval (see attached Salinas Police Department memorandum dated October 20, 2016).

Proximity to Residences, Parks, and Schools

The closest residences are located to the immediate east of the subject site, across Lodge Alley, approximately 140-feet from the front entrance of the convenience store. The nearest residentially-zoned land is located approximately 350 feet to the east. Other commercial uses (restaurant and retail) and parking are located to the north, west, and south of the subject site. The nearest park is Bataan Memorial Park (15 East Market Street), which is located approximately 780 feet to the northwest of

the subject site. The nearest public school is Roosevelt School (120 Capitol Street), which is located approximately 1,970 feet west from the subject site. The nearest private schools are Temple Philadelphia Christian Academy (160 Pajaro Street), which is located approximately 140 feet to the northeast of the subject site and Sacred Heart School (123 West Market Street), which is located approximately 1,670 feet to the northwest of the subject site.

Comparison to other Off-sale Alcohol Conditional Use Permits Since 2010

	Distance to residentially zoned property (feet)	Distance to public schools (feet)	Distance to parks/ playgrounds (feet)	Distance to off- sale alcohol outlets (feet)	Alcohol outlets in Census Tract (%) - allowed/ proposed	Crime rate in PRD (%) (120% = undue concentration	No. of crimes reported
Average	492	1,911	1,908	843	119%	146%	158
Minimum	0	450	400	100	40%	25%	26
Maximum	3,200	5,800	5,400	290	800%	399%	403
CUP 2016-019	350	1,970	780	970	450%	340%	356

The subject property is located less than the average distance to residentially-zoned properties than the other CUP applications (approved, denied, or expired) since 2010. While not zoned residential, there are residential uses located adjacent to the east of the subject property across Lodge Alley. The subject property is about average concerning its location to public schools in comparison with other off-sale alcohol CUP applications. However, the project site is located approximately 140 and 1,670 feet from two private schools. The project site is closer to parks and playgrounds and to other off-sale alcohol outlets than other off-sale alcohol CUP's.

The project site is located in a Census Tract that result in four and a half times (450%) the number of allowed off-sale alcohol outlets. As shown on the above table, the average level of undue concentration for Conditional Use Permits processed since 2010 is 119%. The crime rate for the subject PRD is 220% over the average rate considered as undue concentration for crime (340% vs. 120%).

One-for-One Policy

The applicant is proposing to transfer a license from Seaside to Salinas, which would result in one more additional license within the subject Census Tract and the City of Salinas. This would be in conflict with the Planning Commission's recent One-for-One policy and one of the reasons for the staff recommendation for denial. Per ABC, there are approximately 110 off-sale alcohol licenses within the City of Salinas, which has a population of approximately 161,042, which results in one off-sale alcohol license for every 1,464 residents.

ABC Licensing

Following CUP approval, the applicant is required to obtain a license from ABC in order to conduct off-site sales of alcohol; however, state law prohibits such a license without specific findings from the City Council. State law dictates that ABC shall deny an application in an area of undue concentration unless the local governing body (such as the City Council) determines that “public convenience or necessity would be served by the issuance” (Cal. Business & Professions Code §23958.4(b)(2)).

Conditions of Approval

The City generally requires a CUP for alcohol-related uses (Salinas City Code §37-50.030) and may lawfully regulate through its land use and zoning authority the potentially negative social and environmental effects of alcohol serving businesses. In this regard, the City’s Zoning Code imposes a variety of specific requirements for alcohol-related uses and for all alcohol-related uses located in areas of undue concentration, which are discussed in turn below.

Pursuant to Zoning Code Section 37-50.030(f), if the City Council determines that the public convenience or necessity would be served by the approval of the proposed CUP and the subsequent issuance of an alcohol license by ABC, the CUP would contain the following conditions of approval:

1. Alcohol shall not be sold between the hours of 10:00 p.m. and 6:00 a.m. Coolers containing alcoholic beverages shall be locked between the hours of 10:00 p.m. and 6:00 a.m.
2. The premises shall be maintained free of litter at all times.
3. No alcoholic beverages shall be consumed on the premises.
4. No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window.
5. No display of alcoholic beverages shall be made from an ice tub.
6. No "single-serving" or "one-can" sales of alcoholic beverages shall be made from the premises. A sign to this effect in English and Spanish shall be maintained at the cashier station at all times.
7. No alcoholic beverage shall be displayed within five feet of the cash register or the front door of the premises unless displayed in a permanently affixed cooler.
8. No self-illuminated advertising for alcoholic beverages shall be located on buildings or windows.
9. All business owners and managers shall complete a program certified by the Department of Alcoholic Beverage Control (ABC) as a qualified responsible beverage service (RBS) program prior to the commencement of the use. Any business established after the effective date of the ordinance codified in this section shall require such training of all owners and managers within ninety days of ownership transfer or hire.

Failure of managers to obtain training shall be the liability of the owner. The owner shall maintain on the premises a file containing the certificates of training and shall present the file and its contents upon request by the City at any time during normal business hours. The provisions of this section regarding responsible beverage training shall be suspended upon a finding by the City Planner that the training is not reasonably available.

Additional conditions could be added, including those recommended by the Salinas Police Department, relating to the finding of undue concentration regarding requirements for employee security, buffering of neighboring uses, exterior lighting, hours of operation, and coin- or token-operated amusement games that may be imposed pursuant to Zoning Code Section 37-50.030(f)(5):

1. An electronic age verification scanner shall be installed, maintained, and utilized for all off-sale alcohol sales.
2. Signs shall be posted at the location in English and Spanish with regard to prohibitions of open containers and loitering at the location, and no loitering will be tolerated.
3. No single 40 oz. containers of beer may be sold from premises.
4. No malt liquor or fortified wine products (wines with greater than 15% alcohol content) shall be sold.
5. Sales of wine shall be in containers of at least 750 ml.
6. Digital surveillance system shall be provided with high quality cameras focused on the location of the in-store stocked alcohol, at points of sales transactions, and at entrance/exits of the store and the parking lot, with the capability to store the digital images captured. Surveillance video/photos shall be made available to police upon request.
7. Ample lighting shall be provided in parking lots, exterior area of entrances/exits and situated in areas to enhance video surveillance equipment.
8. There shall be no coin operated video or arcade games and no adult magazines or videos shall be sold.
9. No pay telephone booths shall be permitted on the premises.
10. Any alcohol license violation and/or suspension by the Alcohol Beverage Control Board or significant criminal activity, in the opinion of the City Police Chief, shall constitute grounds for review and modification or revocation of this use Permit in accordance with Section 37-60.640: Expiration- transferability; recordation; rescission; revocation, of the Salinas Zoning Code.

Planning Commission Review:

On January 18, 2017, after public review and comment, the Planning Commission voted 3:1, with one abstention, to deny Conditional Use Permit 2016-019. Staff recommended denial of the Conditional Use Permit. Planning Commissioners cited concerns with an additional off-sale license from Seaside, which would increase the number of such licenses in the City of Salinas. In addition, the Planning Commission cited concerns with the lack of compliance with the one-for-one policy and the impact of an additional off-sale alcohol outlet located in an “area of undue-concentration” on crime in the Central City. One Commissioner supported the application, due to increased economic development (see attached Planning Commission Resolution 2017-01 and draft minutes of the January 18, 2017 Planning Commission hearing).

Appeal of Planning Commission Decision

On January 30, 2017, the Applicant filed a timely appeal of the Planning Commission decision to deny CUP 2016-019 (see attached letter dated January 26, 2017). The letter cited issues with the impact of the proposed off-sale alcohol use on crime, the Planning Commission one-for-one policy, and public convenience (see Appeal Analysis section below).

Analysis of the Appeal

Stated below are the Appellant’s reasons for appealing the Planning Commission denial of Conditional Use Permit 2016-019 and staff responses.

1. “There was an error of discretion on the part of the Planning Commission”: The Planning Commission abused its discretion by not properly determining alcohol related crimes in relation to the requested off-sale alcohol use. Since the crimes were not specifically filtered to determine which of the crimes in the Police Reporting District (PRD) were alcohol related, the Planning Commission was not suitably able to make the correlation between the proposed alcohol related use and the high rate of crime in the PRD.

Staff Response: Per Business and Professions Code Section 23958.4(a)(1), an “undue concentration” for crime occurs if the subject property is located in a crime reporting district that has a 20% greater number of reported crimes, as defined in Business and Professions Code Section 23958(c), than the average number of reported crimes as determined from all crime reporting districts (PRD) within the jurisdiction of the local law enforcement agency (Salinas Police Department). Per Business and Professions Code Section 23958(c)(2), “Reported crimes” means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations. State law does not state that these crimes have to be alcohol related. Per State law, the project site is located in an area of “undue concentration” for crime because the PRD of the subject property has a number of reported crimes (356) that is 20% greater number of reported crimes than the average number of crimes reported by the police department across all PRD’s (125.62).

2. “The determination of the Planning Commission on Conditional Use Permit 2016-019 is not in accord with the purpose of zoning ordinance provisions regarding the issuance of Conditional Use Permits”: The Planning Commission stated that the proposed use should be subject to a One-for-One policy to avoid a net gain of off-sale alcohol licenses in the City of Salinas. The Staff Report lacked the findings in determining the relationship of population size to off-sale alcohol related outlets and simply concluded that more outlets would result in an increase in crime. In addition, most California cities see an increase in alcohol related uses in their downtown areas for various reasons.

Staff Response: As discussed earlier, the Planning Commission has determined that a One-for-One policy should be required for off-sale licenses located in areas of undue concentration. A One-for-One policy would require the elimination of one existing, active off-sale alcohol-related use within City limits to be either from an area of “undue concentration” (based on either the number of retail off-sale ABC licenses or the number of reported crimes) or a nonconforming use (i.e., without a Conditional Use Permit). The Applicant is proposing to transfer an existing off-sale alcohol license from Seaside to Salinas, which would increase the number of off-sale alcohol licenses within the City. This does not comply with Planning Commission policy. In the past, both the Planning Commission and City Council have denied previous Conditional Use Permit applications (such as a previous application located at 170 East Laurel Drive) for off-sale alcohol uses because the transferred license is from outside the City of Salinas. As of 2014, there are 110 off-sale alcohol licenses within the City of Salinas. Per the ABC, there should be one (1) off-sale alcohol license per every 2,500 residents. Per the California Department of Finance, as of January 1, 2016, the estimated population of Salinas is 161,042. Per this figure, there should be a maximum of 64 off-sale alcohol licenses in the City of Salinas (161,042/2,500). As stated above, there are 110 off-sale alcohol licenses in the City, which is 46 licenses or 71.8% above the recommended number of such licenses in the City.

Concerning alcohol related uses in the downtown area, there are many alcohol related uses such as bars, restaurants, nightclubs, and brewpubs in the Central City area. Many of these uses include on-sale alcohol related uses, which do not allow for the consumption of alcohol away from the premises. In addition, many of these businesses help to promote economic development by bringing customers into Downtown Salinas and encouraging entertainment activities.

3. “There was an error of discretion on the part of the Planning Commission: The Planning Commission erred in its discretion of the public convenience factor. The draft conditions of approval of the CUP approval document would allow for the proposed off-sale alcohol use, while the impact of the proposed use would be limited because of the required terms and conditions of the CUP. The Applicant states that the application will allow them to offer customers a safe place to conveniently refuel, purchase general merchandise, and replenish auto-related products.

Staff Response: As stated earlier, the Planning Commission could not establish a finding of public convenience or necessity for Conditional Use Permit 2016-019 because of the project site is located in an area of “undue concentration” because of

both crime (340% vs. 120%) and number of off-sale alcohol licenses in the subject Census Tract (450% increase over what is allowed – 9 proposed to 2 allowed). In addition, the proposed off-sale alcohol use would result in a net gain of off-sale alcohol licenses in the City of Salinas because the license would be transferred from Seaside to Salinas.

ENVIRONMENTAL REVIEW

The environmental impacts of the project have been analyzed in accordance with the California Environmental Quality Act (CEQA). Since the Conditional Use Permit 2016-019 (CUP 2016-019) was denied by the Planning Commission, no finding is required per Section 15270 of the CEQA Guidelines. However, if the City Council desires to overturn the Planning Commission denial of CUP 2016-019 and approve the CUP, the project has been determined to be exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines. The proposed project is exempt because the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing significant effect on the environment. Where it can be seen that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Additionally, the project is exempt from CEQA under Section 15301 Existing Facilities, because there is negligible expansion of the existing service station and convenience store with gas pumps.

ISSUE:

Shall the City Council uphold the Planning Commission denial of Conditional Use Permit 2016-019?

FISCAL IMPACT:

Fiscal impacts to the City are not expected to be significant if the denial of the Conditional Use Permit is either upheld or if it is subsequently overturned by the City Council.

TIME CONSIDERATIONS:

The appeal of the Planning Commission decision on Conditional Use Permit 2016-019 was received by City staff on January 30, 2017. Per Zoning Code Section 37-60.1300(a), the item shall be scheduled to the appellate body (City Council) within 60-days of the City's receipt of the appeal. Per the Zoning Code, the 60-day deadline is March 31, 2017.

ALTERNATIVES/IMPLICATIONS:

The City Council has the following alternative:

Find the use Categorically Exempt from the California Environmental Quality Act (CEQA), and overturn the Planning Commission's denial and approve Conditional Use Permit 2016-019. Staff notes that findings for approval, including public convenience or necessity, would need to be established by the City Council.

CITY COUNCIL GOALS:

Upholding the Planning Commission's denial of Conditional Use Permit 2016-019 helps to promote the City Council's safe, livable community goal for the City.

CONCLUSIONS:

Staff recommends that the City Council uphold the Planning Commission's denial of Conditional Use Permit 2016-019 based on the following:

1. The subject site is located in an area of undue concentration with respect to the allowed number of off-sale alcohol licenses in the subject Census Tract (a 450% increase over what is allowed - 9 proposed to 2 allowed).
2. The subject site is located in an area of undue concentration with respect to crime (the crime rate for the subject PRD is 220% over the average 120% rate considered as undue concentration for crime - 340% vs. 120%).
3. The proposal should be subject to a One-for-One because the proposed off-sale alcohol license would be transferred from Seaside, CA, which results in a net gain of licenses in the City of Salinas.
4. The public convenience or necessity would not be served by the addition of an alcohol license and the approval of an alcohol-related Conditional Use Permit at the proposed location.

Distribution:

City Council
City Manager
City Attorney
Department Directors
3D Investment Group Incorporated, Applicant
Christopher Dabit et al., Property Owner
David Peartree, Belli Architectural Group
Jamie Ramirez, Director of Prevention Office and PARTS Coalition
Heath Johnson, Salinas Police Department

Back Up Pages:

Proposed City Council Resolution
Draft Conditional Use Permit (CUP 2016-019), including the following exhibits:
Exhibit "A" Vicinity Map
Exhibit "B" Title Sheet, Site Plan, and Floor Plan (Sheet A2.1)
Exhibit "C" Police Department Memorandum dated October 20, 2016
Planning Commission Staff Report dated January 18, 2017 without exhibits
Draft January 18, 2017 Planning Commission minutes
Planning Commission Resolution 2017-01
Appeal Letter from 3D Investment Group Incorporated dated January 26, 2017
Areas of Undue Concentration of Off-Sale Licenses and Reported Crimes (Combined) in Salinas
Census Tracts with Undue Concentration of Off-Sale Alcohol Licenses
Police Reporting Districts with Undue Concentration of 20% Greater Number of Reported Crimes than the Average Number of Reported Crimes
Map of Off-Sale Alcohol Licenses for Census Tract 13 (CT 13)
California Department of Alcoholic Beverage Control List of Off-Sale Licenses in Census Tract 13 dated December 28, 2016
California Department of Alcoholic Beverage Control Number of Licenses Authorized by Census Tract updated August 2016
Letter of Certificate of Appreciation from Redwood City dated September 30, 2016
Table: Off-sale alcohol license CUP's since 2010
Business and Professions Code 23958