

SALINAS PLANNING COMMISSION

Staff Report

City of Salinas
Community Development
Department
65 West Alisal Street
Salinas, CA 93901
(831) 758-7206
(831) 758-7215 fax

Director:
Megan Hunter

Planning Manager:
Courtney Grossman

Planning Commission:

Brandon Hill, Chair
George Anzo
Rick Giffin
Brad Griffin
Matthew Huerta
John Meeks, Vice Chair
Matt Nohr

Planning Manager Approval



Agenda Item

ID# 17-052

DATE: January 18, 2017
TO: Planning Commission
FROM: Courtney Grossman, Planning Manager
BY: Thomas Wiles, Senior Planner

SUBJECT: 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

Staff recommends that the Planning Commission deny 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. The project site is located in an area of undue concentration due to high crime in the Police Reporting District and a high number of off-sale alcohol outlets within the Census Tract.

BACKGROUND

The Property and Proposed Project

3D Investment Group, Incorporated is requesting approval of a Conditional Use Permit (CUP) 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 (License No. 575625) located at 201 Monterey Street in the downtown area at the southeast corner of Monterey Street and East

Gabilan Street. Beer and wine is proposed to be stored in a five-door "reach-in cooler" located along the south wall of the sales area, approximately seven (7)-feet from the main entrance.

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 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

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, three (3) off-sale licenses are allowed in CT 13 (see attached Number of Licenses Authorized by Census Tract). 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 Planning Commission 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. 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 (%) = 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	300%	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 three times (300%) 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 Commission's recent One-for-One policy and one of the reasons for the staff recommendation for denial.

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 Planning Commission. State law dictates that ABC shall deny an application in an area of undue concentration unless the local governing body (such as the Planning Commission) 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 Planning Commission 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.

ENVIRONMENTAL REVIEW

The environmental impacts of the project have been analyzed in accordance with the California Environmental Quality Act (CEQA). 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. If the CUP application is denied, no finding is required per Section 15270 of the CEQA Guidelines.

FINDINGS

The Planning Commission may deny an application for a Conditional Use Permit for an off-sale alcohol related use in area of "undue concentration" provided the Planning Commission establishes the findings set forth in the attached proposed Planning Commission Resolution.

TIME CONSIDERATION

The project was deemed complete on December 29, 2016. Final action is required by February 27, 2017 pursuant to the Permit Streamlining Act.

ALTERNATIVES AVAILABLE TO THE COMMISSION

The Planning Commission has the following alternative:

Find the use Categorically Exempt from the California Environmental Quality Act (CEQA), and approve Conditional Use Permit 2016-019. Staff notes that findings for approval would need to be established by the Planning Commission.

CONCLUSION

Staff recommends that the Planning Commission deny 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 300% increase over what is allowed - 9 proposed to 3 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 will not be served by the addition of an alcohol license and the approval of an alcohol-related Conditional Use Permit at the proposed location.

COURTNEY GROSSMAN
Planning Manager

BY:


Thomas Wiles
Senior Planner

Attachments: Proposed Planning Commission Resolution for Denial
Draft Conditional Use Permit (CUP 2016-019) approval documents, 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

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
Letter of Certificate of Appreciation from Redwood City dated September 30, 2016
Table: Off-sale alcohol license CUP's since 2010

Cc: 3D Investment Group Incorporated, Applicant
Christopher Dabit et al., Property Owner

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