

REPORT TO THE CITY COUNCIL

City of Salinas, California

DATE: March 21, 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**

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. 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.

DISCUSSION:

BACKGROUND AND ANALYSIS

This item was originally scheduled for City Council consideration on March 7, 2017; however, it was continued to the March 21, 2017 meeting. For further discussion on this item, please refer to the March 7, 2017 City Council Staff Report and back up items are attached with this Staff Report. On March 17, 2017, staff received a letter of support for approval of Conditional Use Permit 2016-019 from the Salinas City Center Improvement Association dated March 16, 2017 (see attached letter).

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 Planning Commission's 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's 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 (PRD 132) 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). In addition, per crime statistics provided by the Salinas Police Department, specific alcohol-related crimes (i.e. Drunk or Disorderly, DUI, etc.) in PRD 132 consisted of approximately 11% of all reported crimes in 2014 and 14% in both 2015 and 2016. In actuality, this number could be higher, but the police department does not have enough data regarding the link between certain crimes and the use of alcohol (see attached crime data for 2014, 2015, and 2016).*

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
City Council Staff Report dated March 7, 2017 without exhibits
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 (PRD) 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
Salinas City Center Improvement Association Letter dated March 16, 2017
2014 Crime Data for Police Reporting District 132 (PRD 132)
2015 Crime Data for Police Reporting District 132 (PRD 132)
2016 Crime Data for Police Reporting District 132 (PRD 132)