

ZONING ADMINISTRATOR DECISION CONDITIONAL USE PERMIT



DECISION NO. 2015-034

HEARING DATE: December 7, 2015

DECISION DATE: December 23, 2015

FILE NO.: PCUP15-014

SUBJECT: A Conditional Use Permit to establish a Type 20 ABC License (Off Sale Beer and Wine) in conjunction with an existing 2,009 square foot gas station convenience store (Chevron) located at 1065 West Holt Boulevard within the C3 (Commercial Service) zoning district. Submitted by Travis Companies (APN: 1011-132-06)

STAFF

RECOMMENDATION: Approval Approval subject to conditions Denial

PART A: BACKGROUND & ANALYSIS

TRAVIS COMPANIES, INC., (herein after referred to as "Applicant") has filed an application requesting Conditional Use Permit approval, File No. PCUP15-014, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

(a) Project Setting: The project site is comprised of 0.58 acres of land located at 1065 West Holt Boulevard, and is depicted in *Exhibit A: Project Vicinity*, attached. Existing land uses, Policy Plan and zoning designations on and surrounding the project site are as follows:

	<i>Existing Land Use</i>	<i>Policy Plan Designation</i>	<i>Zoning Designation</i>	<i>Specific Plan Land Use</i>
<i>Site</i>	Gas Station – Convenience Store	Business Park	C3 – Commercial Service	n/a
<i>North</i>	Motor Vehicle Sales	General Commercial	C3 – Commercial Service	n/a
<i>South</i>	Retail	Business Park	C3 – Commercial Service	n/a
<i>East</i>	Retail	Business Park	C3 – Commercial Service	n/a
<i>West</i>	Auto Repair	Business Park	C3 – Commercial Service	n/a

Approved By:

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_____ Senior Planner

(b) Project Analysis:

(1) Background— In February of 2013 the Planning Commission approved a Development Plan (File No. PDEV07-025) for Chevron to construct a 2,009 square-foot convenience store, in conjunction with an existing fueling station, and a Variance (File No. PVAR12-003) to reduce the street-side building setback. The Development Plan approval also included additional landscaping and parking spaces and resurfacing of the parking lot. The project was recently completed in early November of 2015 and is now open and operating. In 2007, the applicant chose not to submit a Conditional Use Permit for Off-Sale Alcoholic beverage sales due to the over concentration of Off-Sale licenses within Census Tract 16.00.

The California Department of Alcoholic Beverage Control (ABC) is the controlling State entity which grants, renews, and revokes all ABC licenses. ABC determines how many On-Sale and Off-Sale alcoholic beverage license types should be issued per Census Tract, based upon their populations. There are currently 14 Off-Sale licenses within Census Tract 16.00 and ABC only allows 4 Off-Sale licenses for the Census Tract. The California Alcoholic Beverage Control Act – Code Section § 23817.7 provides exceptions to the limits of Off-Sale Type 20 beer and wine licenses provided the following can be met:

- The applicant shows that public convenience or necessity would be served by the issuance;
- The applicant premises are located in a crime reporting district that is below 20 percent as defined by that Jurisdiction;
- The applicant premises are located in an area that falls below the concentration level of off-sale retail licenses to population in the county in which the applicant premises are located;
- The local governing body of the area in which the applicant premises are located, determines that public convenience or necessity would be served by the issuance; and
- ABC may impose reasonable conditions on a licensee as may be needed in the interest of the public health, safety, and welfare regarding signing, training for responsible beverage sales and hours, and mode of sale.

The City typically does not support increasing the number of licenses within a Census Tract unless Public Convenience and Necessity (PCN) findings can be made. The applicant submitted the request for a Conditional Use Permit in June and attempted to purchase a Type 20 ABC (Beer and Wine) Off-Sale license within the same Census Tract, in order to comply with City policies and not increase the total number Off-Sale licenses within Census Tract 16.00. However, the applicant was unsuccessful with securing a Type 20 Off-Sale license within Census Tract 16.00 and has instead purchased two Off-Sale Type 20 ABC (Beer and Wine) licenses within other Census Tracts within the City and has since surrendered the licenses lowering the number of licenses overall within the City. The table on the following page shows the location of licenses along with census tract and ABC Off-Sale concentration information:

Location	Name of Business	Census Tract	Number Off-Sale Licenses allowed by ABC	Current number Off-Sale Licenses	New Number of Off-Sale licenses within Census Tract
3445 East Shelby Street	Haven Mini Mart	15.04	4	4	3
2645 East Riverside Drive	Fresh & Easy	18.09	3	6	5

(2) Location & Operations — The applicant is requesting a Conditional Use Permit to establish an ancillary Type 20 ABC (Beer and Wine) Off-Sale license in conjunction with an existing Chevron Extra-Mile convenience store and vehicle fueling located at the southeast corner of Holt Boulevard and Mountain Avenue, at 1065 West Holt Avenue (**Exhibit B: Project Site**). Chevron gas station and Extra-Mile convenience store recently opened and is operating 24-hours a day, 7-days a week, and there 2-3 employees on site per shift. The applicant is proposing to allocate 4 coolers for alcohol sales that measure 27 square feet devoting approximately 1.3% gross floor area to alcohol sales, as shown in **Exhibit C: Floor Plan**. Chevron is owned by G&M Oil Gapco and holds over 40 active Off-Sale licenses throughout the State of California. G & M Oil has extensive experience with operating their convenience stores with ancillary Type 20 ABC licenses. All employees are trained and educated by the company and participate in State mandated ABC educational classes. As mentioned previously, the site was recently constructed and since opening the site has been well maintained and there are no outstanding Building Code, Health Code or Code Enforcement violations (**Exhibit D: Site Photos**).

(3) ABC Concentrations — The California Department of Alcoholic Beverage Control (ABC) is the State entity responsible for granting, renewing, and the revoking all ABC licenses. ABC determines how many On-Sale and Off-Sale alcoholic beverage license types should be issued per census tract, based upon their population. The project site is located within Census Tract 16.00 and ABC currently allows 4 Off-Sale Licenses and there are currently 14 licenses resulting in overconcentration. Census Tract 16.00 encompasses over 3,060 acres of land and is characterized by several commercial/industrial businesses, Ontario International Airport and a limited amount of residential (6,133 Census Tract population) bounded roughly by Holt Boulevard to the north, Haven Avenue on the east, Mission Boulevard to the south, and Benson Avenue to the west (**Exhibit E: Census Tract Map & General Plan Land Use**).

When considering the establishment of additional alcoholic beverage licenses within an over-concentrated census tract, ABC generally defers the decision to approve or deny the license to the affected local jurisdiction provided that the public convenience or necessity ("PCN") would be served by issuance of the license. The City typically does not support increasing the number of licenses within a Census Tract unless Public Convenience and Necessity (PCN) findings can be made. In 2011, the Ontario City

Council adopted Ordinance 2943 that outlined PCN findings to be made for Off-Sale licenses in over concentrated Census Tracts, which include the following:

- The retailer must occupy at least 12,000 square feet of gross floor area;
- No more than 10% of the floor area may be devoted to alcoholic beverage display;
- At least 10% of the floor area must be devoted to food sales;
- If location of the proposed business is within a high crime area, which is defined as Police Department calls for service to alcohol-related incidences of 20% or greater as compared to the average number reported for the City as a whole, the hearing body may use that fact in denying the application or the Public Convenience and Necessity finding required for ABC;
- The property/building/use has no outstanding Building or Health Code violations or Code Enforcement activity; and
- The site is properly maintained, including building improvements, landscaping, and lighting.

All CUPs are reviewed by various City departments. The Ontario Police Department has reviewed the application and is recommending denial. However, if the Zoning Administrator elects to approve the CUP the Policed Department has included conditions of approval. The Police Department is recommending denial for the following reasons:

- The requested license is located in an over concentrated Census Tract; and
- It is the Police Department's opinion that the location does not meet the criteria for Personal Convenience and Necessity as defined by the Ontario City Council.

(i) Planning staff recognizes that many retailers sell alcoholic beverages, not as the primary source of revenue but as a convenience to their customers. Through the CUP process staff analyses and evaluates the location and scale of alcohol sales proposed and has approved several Off-Sale licenses for larger grocery and variety stores and more recently for gas station convenience stores in over concentrated areas. The City's ordinance for PCN findings require a retailer to occupy at least 12,000 square feet of gross floor area. Staff has made a policy interpretation that the 12,000 square feet of gross floor area minimum only applies to larger retail stores and/or supermarkets and has allowed gas stations with convenience stores to have Off-Sale licenses provided that all other findings are met. Gas stations are an outdoor use (gas pumps and canopy) and on-site convenience stores typically range anywhere between 1,500 – 6,000 square feet in size and sell a variety of products which generally include limited auto supplies, limited household goods, personal items, fountain drinks, lottery, chips, snacks, soft drinks, coffee, candy, packaged food, ice and alcohol as a convenience to their customers. In addition, the applicant is proposing 4 coolers for alcohol sales that equates to 1.5% of gross floor area well below the 10% percent requirement. Given the reasoning stated above and the minimal amount of floor area proposed for alcohol sales staff is recommending approval and has determined that the 12,000 square foot minimum does not apply to gas stations with convenience stores.

(4) **Land Use Compatibility** — A Conditional Use Permit review is required to ensure the compatibility of adjacent uses by identifying potential nuisance activities and establishing measures for mitigation accordingly. The project site is an existing gas station with convenience store located at the southeast corner of Holt Boulevard and Mountain Avenue with access to the site provided from Holt Boulevard and Mountain Avenue. The property is zoned C3 (Commercial Service) and is surrounded by vehicle sales to the north, a paint store to the east, a thrift store to the south and vehicle repair to the west (**Exhibit F: Surrounding Businesses**). Staff believes that the recommended conditions of approval will sufficiently mitigate potential impacts associated with the proposed ancillary use. Additionally, the primary use is a gas station with a secondary convenience store that provides a variety of items for customer convenience and the proposed 1.5% gross floor area that will be devoted to alcohol sales is well below the maximum allowed of 10%.

(c) **Airport Land Use Compatibility Plan:** This project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT. Any special conditions of approval associated with uses in close proximity to the airport are attached to this report.

(d) **Departmental Review:** Each City department has been provided the opportunity to review and comment on the subject application and recommend conditions of approval to be imposed upon the application. At the time of the Decision preparation, recommended conditions of approval were provided and are attached to this report.

(a) **Public Notification:** The subject application was advertised as a public hearing in at least one newspaper of general circulation in the City of Ontario (the Inland Valley Daily Bulletin newspaper). In addition, notices were mailed to all owners of real property located within 300 feet of the exterior boundaries of the property that is the subject of the hearing, as shown on the records of the County Assessor.

(b) **Correspondence:** As of the preparation of this Decision, Planning Department staff has not received any written or verbal communications from the owners of properties surrounding the project site or from the public in general, regarding the subject application.

PART B: RECITALS

WHEREAS, the City of Ontario has received a request for Conditional Use Permit approval as described in Part A, above; and

WHEREAS, Ontario Municipal Code § 9-1.0405(f) provides that the Zoning Administrator has the responsibility and authority to review and act upon Conditional Use Permits for existing structures; and

WHEREAS, all members of the Development Advisory Board of the City of Ontario were provided the opportunity to review and comment on the requested Conditional Use Permit, and no comments were received opposing the proposed use; and

WHEREAS, on December 7, 2015, the Zoning Administrator of the City of Ontario conducted a duly noticed public hearing on the application, as follows:

- (a) Lorena Mejia, Associate Planner presented the staff report on the proposed use, indicating the staff recommendation of approval with conditions. Following staff's presentation, the Zoning Administrator opened the public hearing.
- (b) The Zoning Administrator asked Police Corporal Steven Munoz what Public Convenience Findings (PCN) were not being met.
- (c) Corporal Munoz explained the project site is located within an over-concentrated census tract for alcoholic beverage off-sale ABC licenses and surrounding tracts were also over concentrated and listed the name of other locations within the vicinity that had off-sale ABC licenses.
- (d) Karl Huy, the applicant's representative, explained the business operation and spoke in favor of the application. He further explained their efforts to secure an ABC license within the existing Census Tract and not increase the total number of off-sale ABC licenses within the City.
- (e) Sherri Olson, the applicant's representative explained that the applicant has an existing location within the City of Ontario with an off-sale ABC license that operates effectively and is always in full compliance. Ms. Olson further explained that the census tract in which they are currently located within contains large land area but a small number of residents making it difficult to adhere to ABC standards for number of licenses within a census tract. She further explained that the project site is located within a busy corridor of the City and the proposed alcohol sales is incidental and a convenience for their customers.
- (f) The Zoning Administrator asked Corporal Munoz if the project site was in a high crime area as it relates to alcohol-related incidents.
- (g) Corporal Munoz explained that the project site is not in a high crime area as it relates to alcohol-related incidents but however there is high crime associated with transients in the vicinity. Additionally, Corporal Munoz noted the location of several businesses in the immediate area that provide off-sale beer and wine (Type 20) and off-sale distilled spirits (Type 21) sales.
- (h) There being no one else to offer testimony regarding the application, the Zoning Administrator closed the public hearing.

WHEREAS, all legal prerequisites to the adoption of this Decision have occurred.

PART C: THE DECISION

NOW, THEREFORE, it is hereby found, determined and resolved by the Zoning Administrator of the City of Ontario as follows:

(b) All facts set forth in this Zoning Administrator Report and Decision are true and correct.

(c) Based upon the evidence presented to the Zoning Administrator during the above-referenced public hearing, the Zoning Administrator hereby finds as follows:

(1) The proposed location of the Conditional Use Permit is not in accord with the objectives and purposes of the Ontario Development Code and the zoning designation within which the site is located.

Fact: Alcoholic beverage sales is allowed with Conditional Use Permit (CUP) approval within the C3 (Commercial Service) zoning district. Part of the analysis in evaluating the Conditional Use Permit is whether the proposed location is within a census tract that is over-concentrated for off-sale licenses and, if so, whether findings of public convenience and necessity ("PCN") can be made. The census tract in which the CUP is proposed is over-concentrated and adjoining census tracts are also over-concentrated. The City has established criteria under which PCN findings can be made – the proposed use does not meet the PCN criteria established for minimum building area and minimum area devoted to food sales. Further, there are several businesses in close proximity that are approved for off-sale beer and wine (Type 20) and off-sale distilled spirits (Type 21) licenses that provide beer and wine sales to the public.

In conjunction with the application, the applicant has acquired two off-sale beer and wine (Type 20) licenses and surrendered them to ABC. While not in the same census tract, the surrendering of the licenses does reduce the total number of off-sale licenses in the City at this point in time. Unfortunately, there is no method of permanently removing these locations from future licensing. For example, the license acquired from 2645 East Riverside Drive is the former location of Fresh & Easy, who vacated the building several months ago. This building is in excess of 12,000 square feet and, depending on the tenant, could meet the PCN criteria established by the City. The result could be the addition of an off-sale license. The location at 3445 East Shelby Street is a gas station currently under renovation. The location was the subject of a CUP approval to upgrade their license from beer and wine (type 20) to distilled spirits (Type 21). While no license has been applied for at this time, it is anticipated that, upon completion of the renovation, the

business will exercise their CUP for off-sale distilled spirits. Should this occur, the two licenses surrendered will be added back into the City total, resulting in a net increase of one off-sale license.

(2) The proposed Conditional Use Permit will not comply with each of the applicable provisions of the Ontario Development Code and applicable municipal codes.

Fact: While the use is consistent with the uses allowed within the C3 (Commercial Service) zoning district, the sale of the beer and wine is proposed within a census tract that is over-concentrated. Under provisions of Alcoholic Beverage Control, additional licenses within an over-concentrated census tract require local jurisdictions to make findings that the proposed off-sale license serve the PCN. The City has established criteria for determining PCN and the application does not comply with the criteria established for minimum building area and minimum area devoted to food sales.

(3) For Off-Sale alcoholic beverage license types located within over-concentrated census tracts (high density of alcoholic beverage sales locations as defined by the Alcoholic Beverage Control Act (commencing with Business and Professions Code Section 23000 et Seq.), the Zoning Administrator finds that the following PCN findings cannot be met:

(i) The retailer occupies a minimum of 12,000 square feet of gross floor area.

Fact: The existing 2,009 square foot building does not meet the 12,000 gross floor area minimum requirement. The intent of the finding was to provide larger stores, offering a variety of products including food sales, with the ability to provide off-site sales for the convenience of their customers. Further, the City Council, in approving the provisions, established the minimum square footage of the building without respect to the type of use. Staff's interpretation that gas stations with convenience markets are not subject to the minimum building square footage is contrary to City Council action.

(ii) At least 10 percent of the floor area is devoted to food sales.

Fact: The convenience store has a snack bar area that totals approximately 4% of the gross floor area, well below the 10 percent requirement.

(d) The Zoning Administrator hereby finds and determines that the project identified in this Decision is categorically exempt from the requirements of the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to § Section 15301: Class 1 of the State CEQA Guidelines. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor

alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The proposed use is located within an existing building and does not include any negligible building additions or operational changes and is therefore categorically exempt.

(e) The Zoning Administrator hereby finds and determines that the proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT.

(f) Based upon the findings and conclusions set forth in Parts A, B and C above, the Zoning Administrator hereby **denies** File No. PCUP15-014.



DENIED by the Zoning Administrator of the City of Ontario on this 23rd day of December 2015.



Scott Murphy
Zoning Administrator