

CITY COUNCIL RESOLUTION NO. 17-07-18-02

PUBLIC CONVENIENCE OR NECESSITY (PCN)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JUAN CAPISTRANO, CALIFORNIA APPROVING ISSUANCE A LETTER OF PUBLIC CONVENIENCE OR NECESSITY (PCN) TO THE CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC) FOR THE ISSUANCE OF A TYPE 21 LICENSE FOR THE PREMISES AT 32001 CAMINO CAPISTRANO (ASSESSOR PARCEL NUMBER 668-073-01) (APPLICANT: BEHRAD DASHTI, PRESIDENT OF SJCC CORPORATION)

Whereas, pursuant to applicable provisions of the Business and Professions Code, the Department of Alcoholic Beverage Control (hereinafter the "Department") is charged with the responsibility of reviewing applications and issuance of licenses ("licenses") for the sale and/or manufacture of alcoholic beverages in the State of California; and

Whereas, Section 23958 of the Business and Professions Code provides that the Department shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4 of said Business and Professions Code; and

Whereas, the subject business is located in Census Tract 423.12 with population such that the Department may permit up to five (5) off-sale licenses before an undue concentration would exist, and there are currently twelve (12) off-sale licenses in Census Tract 423.12; and

Whereas, Section 23958.4 of the Business and Professions Code provides that, notwithstanding the limitations of Section 23958, the Department shall issue a license if the applicant shows that "public convenience or necessity" would be served by the issuance of such license; and

Whereas, said Section 23958.4 further provides that the determination of "public convenience or necessity" shall be made by the Department with regard to certain applications, and shall be made by the local governing body of the area in which the applicant premises are located with regard to certain other applications; and

Whereas, as a local governing body within the meaning of said Section 23958.4 of the Business and Professions Code, the City Council of the City of San Juan Capistrano (hereinafter the "City Council") has the discretion to determine when the public convenience or necessity would be served by allowing an alcohol license in an area where there is an undue concentration of licenses; and

Whereas, Determination of Public Convenience or Necessity is proposed in conjunction with Conditional Use Permit 16-008 to allow for the retail sale of beer and wine for off-site consumption in conjunction with the operation of an existing Shell service station; and

Whereas, Under state law Section 23790 of the Business and Professions Code, the Department may not issue an alcohol license if it violates an existing local zoning ordinance; and

Whereas, The subject site has a Land Use designation and is zoned General Commercial (GC) which encourages retail sales and allows the sales of alcoholic beverages subject to a Conditional Use Permit (CUP); and

Whereas, Behrad Dashti, President of SJCC Corporation, 32001 Camino Capistrano, San Juan Capistrano, has applied for a Type 2 Off Sale Beer & Wine License from the California Department of Alcoholic Beverage Control, and a CUP application with the City of San Juan Capistrano, to allow for the retail sale of beer and wine for off-site consumption in conjunction with the operation of an existing Shell service station within a 2,094 sq. ft. commercial building located at 32001 Camino Capistrano (Assessor Parcel Number 668-073-01); and,

Whereas, Oso, LLC is the owner of real property located at 32001 Camino Capistrano (APN 668-073-01); and

Whereas, the proposed project has been processed pursuant to Section 9-2.301, Development Review of the Land Use Code; and

Whereas, the City's Environmental Administrator has determined that the issuance of a Letter of Public Convenience or Necessity is exempt from the California Environmental Quality Act (CEQA) under CEAQ Guidelines Section 15061(b)(3). Section 15061(b)(3) is a general rule exemption applying to projects that have no possibility of having a significant impact on the environment. The determination that the public convenience or necessity would be served by the issuance of a Type 21 ABC license would not cause environmental impacts as there is no direct physical effect; and

Whereas, the Planning Commission conducted a duly-noticed public hearing on May 9, 2017, pursuant to Title 9, Land Use Code, Section 9-2.302, to consider public testimony on the proposed project and has considered all relevant public comments, and subsequently recommended against the issuance of a Letter of Public Convience and Necessity; and

Whereas, the City Council conducted a duly-noticed public hearing on July 18, 2017 pursuant to Title 9, Land Use Code, Section 9-2.302 to consider public testimony on the proposed project and has considered all relevant public comments. Following said public hearing, the City Council adopted Resolution No. 17-07-18-XX granting Conditional Use Permit 16-008; and

Whereas, the City of San Juan Capistrano has prepared a Letter of Public Convenience or Necessity provided as Exhibit A attached hereto.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Council of the City of San Juan Capistrano does hereby find that the public convenience or necessity would be served by the proposed retail sale of beer and wine in conjunction with a Shell Service Station for the following reasons:

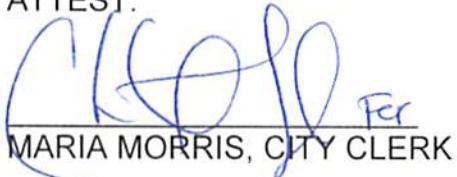
1. The proposed use, as conditioned, will not adversely affect the adjoining land uses in the area in which it is located because the sale of beer and wine is ancillary to the primary service station use product mix provided, including gasoline and convenience food products; and,
2. That although the proposed location is within a census tract with an undue concentration of retail alcohol licenses, the project has been conditioned and designed to minimize impacts to the surrounding community; and,
3. That although the proposed location is within a census tract with an undue concentration of retail alcohol licenses, a geographic analysis of the existing off-sale alcohol licenses show only five of the twelve existing off-sale licenses are located within 1,000 feet of the subject site. As a result, the area in the immediate vicinity does not have a large concentration of off-sale retailers; and,
4. That although there are other off-sale licenses in the area, each store—Rite Aid, Vons, Ralphs, Churchill Liquor, etc.—is distinct in its size, targeted clientele, and business model. Establishing this off-sale outlet will allow nearby residents the convenience of one-stop shopping for food, retail, and alcohol.

PASSED, APPROVED AND ADOPTED this 18th day of July 2017.



KERRY K. FERGUSON, MAYOR

ATTEST:

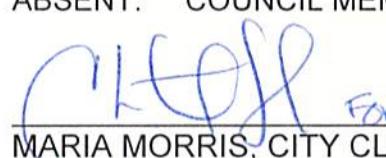


MARIA MORRIS, CITY CLERK

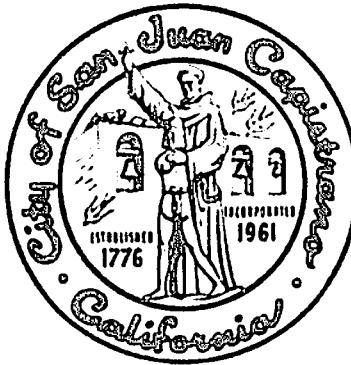
STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN JUAN CAPISTRANO)

I, MARIA MORRIS, appointed City Clerk of the City of San Juan Capistrano, do hereby certify that the foregoing Resolution No. 17-07-18-02 was duly adopted by the City Council of the City of San Juan Capistrano at the Regular meeting thereof, held the 18th day of July 2017, by the following vote:

AYES: COUNCIL MEMBERS: Reeve, Maryott, Farias and Mayor Ferguson
NOES: COUNCIL MEMBERS: Patterson
ABSENT: COUNCIL MEMBERS: None

 For
MARIA MORRIS, CITY CLERK

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SAN JUAN CAPISTRANO, CA 92675
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MEMBERS OF THE CITY COUNCIL

SERGIO FARIAS
KERRY K. FERGUSON
BRIAN L. MARYOTT
PAM PATTERSON, ESQ.
DEREK REEVE

July 19, 2017

State Department of Alcoholic Beverage Control
Attention: Roxana Zaharia
605 W. Santa Ana Boulevard
Building 28, Suite 369
Santa Ana, CA 92701

Subject: Conditional Use Permit No. 16-008, Letter of Public Convenience or Necessity for Capistrano Shell Service Station at 32001 Camino Capistrano, San Juan Capistrano, CA 92675

Ms. Zaharia:

This letter is written in reference to the Capistrano Shell's application for a Type 20 Off Sale General beverage control license at 32001 Camino Capistrano in San Juan Capistrano. The California Department of Alcoholic Beverage Control (ABC) is charged with the responsibility under state statute to review and issue licenses for the sale and/or manufacture of alcoholic beverages. State law provides that ABC shall deny an application for a license if the issuance of that license would either create a law enforcement problem, or result in or add to an undue concentration of licenses, unless a determination is made that public convenience or necessity would be served by the issuance of that license.

Pursuant to Section 23958.4 of the California Business and Professions Code, the City must issue a letter of Public Convenience or Necessity (PCN) since the proposed business is located within a census tract which has been deemed by ABC to have an "undue concentration" of retail licenses. ABC designates a census tract in Orange County as having an "undue concentration" when more than one Type 20 or 21 off-sale license exists for every 1,704 inhabitants within that census tract. Where that threshold is met, ABC requires the City to make a finding of public convenience or necessity before new alcohol licenses may be issued in a census tract.

The proposed Capistrano Shell is located within census tract 423.12, which has a population of 9,085. Based on the population count, the threshold for requiring a PCN is six type 20 or 21 licenses and twelve currently exist; if granted, Trader Joe's would be

Capistrano Shell PCN Letter

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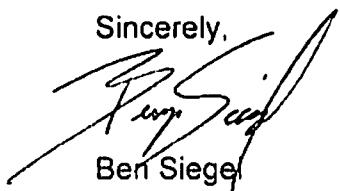
July 19, 2017

the thirteenth licensee. A geographic analysis of the existing off-sale licenses show only five of the eleven establishments are located within 1,000 feet of the proposed Capistrano Shell service station. As a result, the area in the immediate vicinity of the proposed Capistrano Shell service station does not have a large concentration of off-sale alcohol retailers.

Furthermore, service stations are a chain that offers alcoholic beverages as an ancillary use to the primary gas and food store use as part of its normal business model. Although the proposed location is within a census tract with an "undue concentration" of retail alcohol licenses, the project has been conditioned, via Conditional Use Permit 16-008, and designed to minimize impacts to the surrounding community. Additionally, although there are other off-sale licenses in the area, each store (Rite Aid, Trader Joe's, Ralphs, Churchill Liquor, etc.) is distinct in its size, targeted clientele, and business model. Establishing this off-sale outlet will allow nearby residents the convenience of one stop shopping for food, fuel, and alcohol.

If you have any questions or concerns please contact Laura Stokes, Housing Coordinator / Assistant Planner at (949) 443-6313 or lstokes@sanjuancapistrano.org.

Sincerely,



Ben Siegel
City Manager